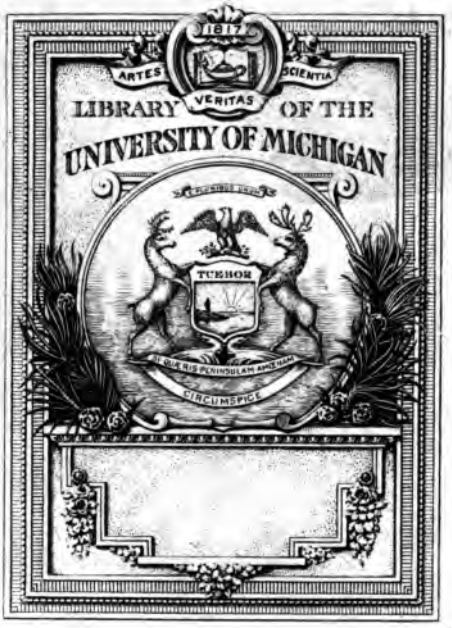
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COMPULSORY ARBITRATION OF INDUSTRIAL DISPUTES

COMPILED BY
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INTRODUCTORY NOTE

President McKinley once said that so long as there have been Capital and Labor, there have been strikes. In recent years, as Capital and Labor have become better organized and as industry has developed and life become more complex, strikes have frequently been greater in extent, involving more workmen and causing greater loss to both Capital and Labor and greater inconvenience to the general public. More than this, the official statistics compiled at Washington show that strikes are increasing and that voluntary arbitration has been a failure. When boards of voluntary arbitration have offered their services to adjust differences between Capital and Labor, they have frequently received no more satisfaction than to learn that one party or the other had "nothing to arbitrate."

So great are the losses and inconveniences resulting from industrial warfare, and so bitter are the animosities it engenders, that scholars and statesmen have long sought a more efficient remedy than mediation, conciliation, and voluntary arbitration. In 1894 New Zealand adopted compulsory industrial arbitration as an avowed experiment. The system was soon afterwards adopted in Australia, and it seems to have worked with a considerable measure of success in both countries, though it is true that the laws have been frequently amended and that the later results seem less favorable than those of the earlier years. In 1907 a system of arbitration, applying only to railroads, mines, and public utilities, was adopted in the Dominion of Canada. Unlike the New Zealand system, the awards are not made compulsory on either party to the dispute, but there are some compulsory features to the law, namely that there may be no cessation of industry either by strike or lockout until there has been an official investigation of the merits of the dispute and the findings published. After this time, strikes and

lockouts are not unlawful, the law leaving it to public opinion to enforce the awards.

In none of the above mentioned countries have strikes and lockouts been entirely prevented, nor is it claimed by the advocates of either system that more can be done than to reduce Labor difficulties to a minimum. While there is no "land without strikes," there can be no question but that Labor troubles have been greatly reduced both in Australasia and in Canada. In the latter country there have been only eighteen strikes in the first six years of the law, during which time one hundred and forty-five applications were filed.

The Erdman Act, adopted by Congress in 1898, is an attempt to apply the principles of mediation and voluntary arbitration to the settlement of differences between the interstate railroads and their employees. It is not as broad as the Canadian law, and it has no compulsory features. Though no very serious strike has occurred on an interstate railway since its adoption, its results can hardly be regarded as successful. The threatened strike of the Brotherhood of Locomotive Engineers of the Eastern Railroads in 1912 was settled by arbitration outside of the provisions of the Erdman Act, and the Board of Arbitration that settled the matter recommended the adoption of compulsory arbitration of the disputes between railways and their employees.

Public opinion in this country seems to be less favorable to the New Zealand system now than it was ten years ago, while the Canadian system, on the other hand, seems to have grown in favor within the last few years. Samuel Gompers and most of the other prominent Labor leaders are earnestly opposed to compulsory arbitration on the ground that it is an infringement on the rights and the freedom of the working classes. There are, however, scholars and statesmen who believe that the New Zealand system should be adopted in this country.

L. T. B.

October, 1914.

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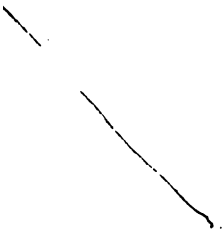

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BRIEF

Resolved, That Capital and Labor should be compelled to settle their disputes in legally established courts of arbitration.

AFFIRMATIVE

Introduction.

A. The question presupposes the existence of labor disputes.

B. The Affirmative merely proposes that these disputes be settled by peaceful adjudication in courts of law, as all other disputes are now settled.

C. We must not lose sight of the fact that in addition to the two antagonists in every labor dispute there is always a great third party, the general public, innocent of any blame but injured by every strike.

D. The Affirmative does not claim that compulsory industrial arbitration will put an absolute end to all phases of industrial warfare, but we do claim that it will reduce labor disturbances to a minimum, as it has done in New Zealand.

I. The existing conditions in our industrial system demand a remedy.

A. There are great evils connected with industrial warfare.

1. Violence and serious disturbances of the public peace, often accompanied by destruction of life and property. (Outlook. 78: 969-72, McClure's. 23: 43-57, Report of the Industrial Commission. 19: 877-85 and 890-3)

(a) The Pullman Car Strike of 1894.

(b) The Colorado Mine Strike.

(c) The Philadelphia Street Car Strike.

2. Boycotts and blacklisting which often continue after the strike is over.
   (a) The Boycott of the Buck Stove and Range Co. of St. Louis. (Bulletin of the Bureau of Labor. 18: 124-38)
   (b) The Boycott of League (Base Ball) Park in Cleveland.
3. Breaking down of respect for law and order.
4. All classes are injured.
   (a) Strikers by loss of wages. (Report of the Industrial Commission. 17: 667-71. Report of the Anthracite Coal Strike Commission. 37)
   (b) The non strikers. (McClure's. 20: 325-36)
   (c) Employers by stoppage of production.
   (d) The general public by interruption of service and depression of business. (Outlook. 94: 517-8)

B. Present methods do not afford the desired remedy.
1. The Twenty-First Annual Report of the Commissioner of Labor shows that from 1881 to 1905, the date of the last report on strikes, there were 36,757 strikes in the United States and that they have increased steadily from year to year.
2. Voluntary arbitration and conciliatory methods have failed utterly to settle or prevent strikes.
   (a) Voluntary arbitration is wrong in theory, because boards of this kind lack the power to compel the parties to arbitrate and the power to enforce their awards.
   (b) Voluntary arbitration has failed in foreign countries. (Bulletin of the Bureau of Labor. 16: 970-7)
   (c) It has failed completely in this country.
      (x) Only one-half of the states have ever adopted it.

(y) Only one and six-tenths of one per cent of the strikes in the United States between 1881 and 1905 were settled by voluntary arbitration. (Twenty-First Annual Report of the Commissioner of Labor. 85)

(d) Conciliation has failed to settle the great strikes.

(e) Trade agreements presuppose ideal relations between Capital and Labor.

II. Compulsory Arbitration offers the desired remedy.

A. It is sound in theory.

1. Decision by reason is better than decision by force.

2. The public always wants arbitration.

3. The proposed courts would represent all parties: Capital, Labor, and the general public as they do in New Zealand.

4. They will possess two requisites which present boards lack.

(a) The power of permitting either contestant to bring the other contestant into court and compel him to arbitrate the dispute.

(b) The power of enforcing its decisions.

B. The welfare of the people demands enforced arbitration.

1. In many strikes the general public suffers more than either contestant. (Outlook. 94: 517-8)

2. Being thus vitally interested the public has a right to demand settlement in a court of justice.

C. It is the duty of the state to establish these courts. (Forum. 14: 21-5)

1. The primary purpose of government and all public authority is the promotion of peace and public welfare. (Garner — Introduction to Political Science. p. 316. [311-8])

2. The public welfare is involved in all labor disputes.

3. Compulsory Arbitration will reduce labor disputes to a minimum.
   (a) It has done this in New Zealand and New South Wales.

D. Compulsory Arbitration will lessen the dangers that threaten our institutions and civilization.
   1. From socialism because it guarantees the laborers a living wage and continued employment, which is all that socialism can offer.
   2. From race suicide.
   3. From demagogues or walking delegates or any other outgrowth of discontent.

III. Compulsory Arbitration is practicable.

A. Compulsory Arbitration has been successful wherever it has been tried.
   1. It has benefited capitalists.
      (a) In making contracts they can proceed without the fear of a strike or of being compelled to pay unreasonable wages.
      (b) Industrial peace and security have drawn capital into the country.
   2. It benefits the laborers.
      (a) They are freed from the losses and hardships of strikes.
      (b) They have legal rights in regard to their wages.
      (c) Industrial justice is also extended to those who are not able to conduct a successful strike.
   3. It benefits the general public.
      (a) It guarantees public peace.
      (b) It secures continuous service.

B. Conditions in this country are favorable to adoption of Compulsory Arbitration.
   1. The awards can be enforced.
      (a) On employers or capitalists by fine or imprisonment.

(b) On employees by
  (x) The necessity of working.
  (y) The removal of the cause of a strike, namely an unsettled difference.
  (z) By the force of public opinion.

2. Unjust awards are improbable.
  (a) These courts (as in New Zealand) would be made up of a representative of capital, labor, and the general public.
  (b) If conditions make it impossible for an employer to pay any certain wage, it will not be difficult for him to establish that fact in court.
  (c) Working-men do not want or expect a wage higher than an industry can pay.
  (d) A wage is always the result of a compromise and the effect upon industry is the same whether the compromise is brought about by collective bargaining, conciliation or in a court of industrial justice.
  (e) Sixteen years of experience in New Zealand, ten years in New South Wales do not reveal a single case of an unjust or unreasonable award.

C. It is the natural remedy of the age, the logical next step.

NEGATIVE

ıtroduction.

A. Meaning of the question.

1. All differences between Capital and Labor to be settled in this manner.
2. Either party or the court itself may take the initiative.
3. Special courts are to be established.

4. The courts are to be given power to compel both parties to submit to arbitration and to accept the award.

B. This is entirely new.
   1. In vogue nowhere except in some of the South Sea Islands.
   2. Therefore a heavy burden of proof on the Affirmative.

C. The Negative will show.
   1. Compulsory Arbitration is unnecessary.
   2. It is unwise and undesirable.
   3. It is impracticable.

I. Compulsory Arbitration is unnecessary.
   A. Strikes are not a sufficient necessity.
      1. Less than 4 per cent of the men engaged in industry are involved in strikes annually. (Report of the Industrial Commission. 17: CXXIX)
      2. Only 1 work day in 500 lost in strikes, ⅕ of one per cent.
      3. Average length of a strike is 25.4 days. (Twenty-First Annual Report of the Commissioner of Labor, 46)
      4. There is no danger to our institutions in strikes.
         (a) Losses are small proportionally, 1/500 part in time.
      5. Strikes are decreasing proportionally. (Adams and Sumner. Labor Problems. pp. 179-81)
   B. There are now strong factors making for industrial peace.
      1. Greater organization.
      2. Voluntary arbitration by state boards. (N. P. Gilman. A Dividend to Labor. p. 22)
      3. Conciliation.
      4. Trade agreements and collective bargaining.
      5. Public opinion.

II. Compulsory Arbitration is unwise and undesirable.
   A. It is un-American,—wrong in principle.

1. Destroys individual liberty.
   (a) of employer.
   (b) of employee,—involuntary servitude.
2. Destroys right of free contract.
3. Gives courts too great powers.
4. It is unconstitutional. (Peters. Labor and Capital. p. 281)
   (a) It has been so held by the courts.
      (x) State vs. Ryan 182 Mo. 349, (81 S. W. 435)
      (y) W. U. Tel. Co. vs. Myatt 90 Fed. 335.
      (z) State vs. Johnson 61 Kans. 803 (60 Pac. 1068)
   (b) It is in violation of the part of the Constitution relating to the obligation of contract. (Article 1, Section 10:1)
   (c) It is in violation of the Seventh Amendment which provides for trial by jury.
   (d) It is in violation of the Thirteenth Amendment for it would be involuntary servitude.

B. It is unjust to employers.
   1. Employers have property and are more easily reached by the courts. In New Zealand only licensed unions can be made a party to a suit. Working-men may act as individuals and keep out of reach of the courts, but employers could not.
   2. These courts could not prevent a secret boycott which hurts employers seriously.
   3. It would make conditions of competition unfair among employers.
   4. It would destroy freedom of contract.
   5. It would increase cost of production and drive capital out of the country.

C. Unfair to employees. (Le Rossignol and Stewart. State Socialism in New Zealand, p. 243)
   1. It would be involuntary servitude.

2. It would weaken labor unions, if not destroy their usefulness.
3. It would encourage increased disrespect for law and the judiciary.
4. It would increase the cost of living. (Le Rossignol and Stewart. State Socialism in New Zealand. p. 244)
5. It would be an injury to inefficient workmen. (Le Rossignol and Stewart. p. 232)

D. It would destroy present methods of securing industrial peace.
1. Voluntary arbitration, where capital and labor meet as friends, would be completely ended.
2. Trade agreements would be less useful.
3. Public opinion would be entirely eliminated.
4. It would widen gulf between capital and labor.

E. It is too great an experiment.
1. Too great a change from existing methods. (Ely. Outlines of Economics. p. 405)
(a) There is nothing in our system of government or industry preliminary to it.
(b) Anglo-Saxon institutions are always a gradual growth; evolution, not revolution.
(c) Drastic legislation is seldom good legislation.
2. On too large a scale.
(a) Too large territory.
(b) Too much capital involved.
(c) Too many industries.
(d) Too many courts required, too great in expense.
(e) Too great variety of conditions.
3. Experiments should always be tried on a small scale.

III. Compulsory Arbitration is impracticable.

A. The system has failed wherever it has been tried.
1. In New Zealand.

(a) Strikes have occurred since its adoption, e. g. Slaughtermen's strike. (Le Rossignol and Stewart. State Socialism in New Zealand. pp. 250 et seq.)

(b) Courts have been unable to enforce their awards.

(c) No good results have been shown.

(d) There is general dissatisfaction. Prosperity since 1895 not due to Compulsory Arbitration. (Reeves. State Experiments in Australia and New Zealand. Vol. II. p. 162)

2. In West Australia where the system has been entirely abandoned.

B. Even if Compulsory Arbitration has been successful in the South Sea Islands, that fact would prove nothing for the United States because conditions are so very different.

1. In size.

(a) New Zealand is smaller in area than Colorado.

(b) It has 800,000 people, less than one per cent of the population of the U. S.

2. In development.

(a) New Zealand has no modern industry.

(b) Only 27,000 persons employed in factories—we have four times as many in the city of Cleveland.

(c) There were only four strikes in the two years before the experiment was begun.

(d) Population is homogeneous—there are no sharp distinctions between rich and poor.

(e) Conditions are the same throughout the two small islands of New Zealand, but are very different in the different sections of our vast country, north and south, east and west.

3. Form of government.

(a) United States is a decentralized or federal government while New Zealand is highly centralized.

(b) Non-interference of personal liberty has always been the American principle, while New Zealand is the land of fads and "isms." They have government railroads, telegraphs, telephones, gas-plants, electric plants, government insurance, government mines and factories.

C. Conditions here are unfavorable to the experiment.

1. Federal form of government; there must be national and state courts.

2. Distrust of the courts by workingmen. (Industrial Commission. 14: 46)

D. Compulsory Arbitration could not be made to work out here.

1. Awards could not be enforced on either employers or employees, nor their sympathizers.

(a) How could any court compel 200,000 men to resume work if they refused to do so?

(x) By fines? How collect them? The court could not reach the union treasury. It would not be practicable to fine each workman separately. In either case it is doubtful whether the fine could be collected.

(y) By imprisonment? How imprison 200,000 men or 1/10 that number? It would be slavery and would not be tolerated in this country. There are not enough jails and penitentiaries to hold them.

(z) Men might be forced to work at the point of a bayonet, but this form of involuntary servitude would never be tolerated in this country.

(b) The great corporations could not be compelled to obey an award.

(x) How could a Nevada court compel the U. S. Corporation of New Jersey to resume work at a Minnesota iron mine, a West Virginia coal mine, or a Pittsburg blast furnace?

2. It is open to too great abuses.
   (a) Politics will influence the courts.
   (b) Judges are often financially interested.
3. Impossible to get a just decision.
   (a) Courts would have to decide what is a fair wage in each separate trade, or a minimum wage as is done in New Zealand.
   (b) A fair wage or fair minimum wage in a small town in Nebraska would not be fair in New York City or Boston, for the cost of living is higher in the latter place.

E. There is general public opposition and distrust. (Report of the Industrial Commission. XIX: 861)

1. No general agitation for it.
2. Opposed by workingmen: Gompers; Mitchell and others. (Report of the Industrial Commission. IV: 762 and 764)
3. Employers also oppose it.
4. Scholars and statesmen are opposed to it.
   (a) Carroll D. Wright, late Commissioner of Labor. (Forum. 15: 323-31)
   (b) President Hadley of Yale.
   (c) Charles Francis Adams.

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GENERAL DISCUSSION

Twenty-First Annual Report of the Commissioner of Labor.

Strikes and Lockouts in the United States, 1881-1905.

Calendar Year.	Number of Strikes.	Number of Lockouts.	Establishments Involved.	Average Days Duration per Establishment.		Strikers.	Employees Locked Out.	Employees Thrown Out of Work.
				Strikes.	Lockouts.			
1881 ...	471	6	2,937	12.7	32.2	101,070	655	130,176
1882 ...	454	22	2,147	21.9	105.0	120,860	4,131	158,802
1883 ...	478	28	2,876	20.6	56.8	122,198	20,512	170,275
1884 ...	443	42	2,721	30.4	41.4	117,313	18,121	165,175
1885 ...	645	50	2,467	30.0	28.0	158,584	15,424	258,129
1886 ...	1,432	140	11,562	23.3	32.2	407,152	101,980	610,624
1887 ...	1,436	67	7,870	20.9	49.8	272,776	57,534	439,306
1888 ...	906	40	3,686	20.3	74.9	103,218	13,787	162,880
1889 ...	1,075	36	3,918	26.2	57.5	205,068	10,471	260,290
1890 ...	1,833	64	9,748	24.2	73.9	285,900	19,233	373,499
1891 ...	1,717	69	8,662	34.9	37.8	245,042	14,116	329,953
1892 ...	1,298	61	6,256	23.4	72.0	163,499	30,050	238,685
1893 ...	1,305	70	4,860	20.6	34.7	105,008	13,016	287,756
1894 ...	1,349	55	9,071	32.4	39.7	505,049	28,548	690,044
1895 ...	1,215	40	7,343	20.5	32.3	285,742	12,754	407,188
1896 ...	1,026	40	5,513	22.0	65.1	183,813	3,675	248,838
1897 ...	1,078	32	8,663	27.4	38.6	332,570	7,651	416,154
1898 ...	1,056	42	3,973	22.5	48.8	182,067	11,038	263,219
1899 ...	1,797	41	11,640	15.2	37.5	308,267	14,698	431,889
1900 ...	1,779	60	11,529	23.1	265.1	399,656	46,562	567,719
1901 ...	2,924	88	11,359	29.2	27.0	396,280	16,257	563,843
1902 ...	3,162	78	15,552	25.4	158.9	553,143	30,304	691,507
1903 ...	3,494	154	23,536	29.1	53.5	531,682	112,332	787,834
1904 ...	2,307	112	12,518	35.5	69.4	375,754	44,908	573,815
1905 ...	2,077	109	9,547	23.1	41.7	176,337	68,474	302,434
Total	36,757	1,546	199,954	25.4	84.6	6,728,048	716,231	9,529,434

Twenty-First Annual Report of the Commissioner of Labor. p. 85.

Strikes and Lockouts Settled 1901-1905.

Year.	STRIKES			LOCKOUTS		
	Number.	Number settled by joint agreement.	Number settled by arbitration.	Number.	Number settled by joint agreement.	Number settled by arbitration.
1901.....	2,924	149	49	88	10	2
1902.....	3,162	204	58	78	11	1
1903.....	3,494	246	66	154	18	3
1904.....	2,307	130	23	112	17	2
1905.....	2,077	74	27	109	10	3
Total...	13,964	803	223	541	66	11
Per Cent	100	5.75	1.6	100	12.2	2.3

Sixteenth Annual Report of the Commissioner of Labor. p. 24.

Loss Through Strikes and Lockouts 1881-1900.

	Wage loss to employees.	Assistance to employees by labor organizations.	Loss to employers.	Total loss.
1881.....	3,391,097	291,149	1,926,443	5,608,689
1882.....	10,330,573	782,007	4,381,476	15,494,056
1883.....	7,343,692	563,486	4,993,124	12,900,302
1884.....	9,088,127	721,898	4,033,920	13,843,945
1885.....	11,564,421	555,315	4,844,370	16,964,106
1886.....	19,273,511	1,671,582	14,307,306	35,252,399
1887.....	20,794,234	1,277,400	9,518,231	31,589,865
1888.....	7,477,806	1,838,599	7,726,216	17,042,621
1889.....	11,789,408	707,406	3,243,877	15,740,691
1890.....	14,833,304	987,495	5,621,662	21,442,461
1891.....	15,685,214	1,182,752	6,793,576	23,661,542
1892.....	13,628,635	1,371,558	6,840,771	21,840,964
1893.....	16,597,449	927,451	4,440,615	21,965,515
1894.....	39,168,301	1,091,296	19,964,713	60,224,310
1895.....	13,836,533	626,866	5,656,437	20,119,836
1896.....	11,789,152	523,520	5,661,770	17,974,442
1897.....	18,052,510	768,490	5,166,731	23,987,731
1898.....	10,917,745	632,326	4,835,865	16,385,936
1899.....	16,643,139	1,882,671	7,822,772	25,688,898
1900.....	34,478,372	1,222,987	14,879,229	51,240,272
Total	306,683,223	19,626,254	142,659,104	468,968,581

Strike Statistics of Great Britain, 1905-1909.

Number of strikes and lockouts..... 2,280
Number of employees out of work..... 1,055,100
Working days' wages lost 21,269,330

Even at only an average of $1.50 per day per worker, that strike record meant the loss of over $31,000,000 in wages in only five years by strikes and lockouts.

Result of 2,280 strikes and lockouts in five years:

	Number.	Pct.
Settled in favor of employers.....	968	42.5
Compromised	729	32.0
Settled in favor of employees.....	575	25.2
Unsettled	8	0.3
Totals	2,280	100.0

Report of the Industrial Commission. Vol. XVII. pp. CXXXIII-CXXXIV.

Losses from Strikes and Lockouts.

The United States is the only country which endeavors to present statistics regarding the losses of employers and employees as the result of labor disputes. It is admitted by the Department of Labor that these figures are apt to be somewhat misleading. It is, for example, very difficult to ascertain precisely the daily rate of wages which strikers lose by being out of employment, while it is still more difficult to know precisely how much is the loss in profits to the employer. Moreover, it is true, especially in some trades, that periods of unemployment are likely to occur from time to time even in the absence of strikes. The aggregate amount of time and earnings lost by employers and employees during a year may not be materially increased by a strike, and neither the employers nor the employees may suffer much more from the quitting of work on account of the strike than

they would have suffered in any case. While the figures presented must therefore be taken with proper caution, they are nevertheless interesting.

The loss in wages to employees as the result of strikes and lockouts from 1881 to 1900 is calculated at no less than $306,683,223. While this amount looks large at first blush, it represents an average of only a little over $15,000,000 yearly, a relatively small sum in comparison with the aggregate amount paid out in wages. The fact already shown, that only one day out of 406 is lost by the average working man through strikes, shows that the money lost can not be so excessive as frequently supposed. The loss to employers through strikes and lockouts from 1881 to 1900 is stated to be $142,659,104, somewhat less than one-half of the amount lost by strikers. It is perhaps to be expected that the losses of employers will be less than those of employees, since the aggregate of profits is usually less than the aggregate of wages in a given establishment.

No attempt has been made to estimate the value of the results obtained by strikers in cases where they were successful or the length of time during which higher wages or better conditions would have to be enjoyed in order to offset the losses of strikes and lockouts.

Report of the Industrial Commission. Vol. XVII. pp. CXXIX-CXXX.

Strikes and Lockouts: Comparison with Foreign Countries.

The foreign countries which have presented strikes statistics for any considerable number of years are Great Britain, France, Austria, and Italy. Germany began the presentation of such figures in 1899, and a report for that year only is available. In the text the statistics of the number of strikes and strikers from year to year in each country are given, together with some discussion as to the significance of the figures. It will be sufficient here to compare the vari-

ous countries with the United States as regards the prevalence of strikes in proportion to the industrial population. It can scarcely be hoped that the elimination of those classes which are not subject to strike has been made in precisely a parallel fashion for each country, since the census methods employed by different governments vary somewhat. Nevertheless, it is believed that the figures in the following table represent fairly the industrial population of each country. It is well known that the proportion of the total population engaged in manufacturing, mechanical, mining, and transportation industries differs very greatly in different countries. Only in the United States, Great Britain, and Germany is a distinction made between the number of strikers and the number thrown out of employment as the result of strikes, and it is uncertain whether or not in the other countries the figures given include all thrown out of employment.

COMPARATIVE PREVALENCE OF STRIKES

Country	Years	Annual number of strikers or persons thrown out of employment by strikes and lockouts	Industrial population Census of 1890 or 1891	Number of strikers, etc., per 1000 of industrial population
United States	1881–1900	330,500	9,843,466	33.6
Great Britain	1890–1900	295,220	10,689,018	27.6
France	1890–1899	92,448	4,779,787	18.3
Germany	1899	117,750	10,619,731	11.1
Austria	1894–1899	49,139	3,264,188	15
Italy	1889–1898	41,462	3,001,344	13.8

From this table it appears that in proportion to the industrial population a larger number of persons are thrown out of employment yearly by strikes and lockouts in the United States than in any other country presenting strike statistics, no less than 33.6 being out of employment at some time each year per thousand of the working population. In Great Britain the corresponding figure is next highest, 27.6 per thousand of the population. The British statistics seem to show a distinct decrease in the number of strikes and

strikers during the past few years, and there is reason to believe that the increased employment of methods of collective bargaining, conciliation, and arbitration for the settlement of the relations between employers and employees has contributed to this result. France shows the next largest proportion of strikers, 18.3 per thousand of the population, or about two-thirds of the proportion of Great Britain. The German statistics cover only a single year, and are therefore less significant, but for that year the number of persons thrown out by strikes and lockouts was less in proportion to the industrial population than in any other country covered by the table, 11.1 per thousand. The proportion of persons thrown out of employment by strikes yearly in Austria is 15 per thousand and in Italy 13.8 per thousand of the industrial population.

The prevalence of strikes by industries exhibits some degree of parallelism in the different countries. Thus the mining industry shows an especially large proportion of strikers in Great Britain and in Austria, both important mining countries, as well as in the United States, although in Germany, where many mines are owned by the government, the proportion of strikers in this industry is low, while in France the proportion is not conspicuously high. The textile trades show a high proportion of strikers in the United States, France, Italy, and Austria, but in Great Britain peaceful methods for the settlement of differences in these trades have been introduced to such a large extent that the proportion of strikers is less than in all industries combined. Building trades in the United States show about the same proportion of persons thrown out of employment by strikes as do all trades combined, and the same seems to be true in Great Britain; but in the continental countries the workers in the building trades seem especially disposed to strike.

It is probable that the reason why strikes on the whole are less prevalent in continental countries than in Great Britain and the United States is that workingmen feel less independent, have less individual initiative, and are more disposed

to accept the paternal rule of the government and of the employer, than is the case among the more democratic Anglo-Saxon peoples. It is certainly true that workingmen are much less strongly organized in the continental countries than in the United States and Great Britain, and that their condition is on the whole much less satisfactory. On the other hand, labor organizations are beyond question stronger in Greater Britain than in the United States, and yet the proportion of persons thrown out of employment by strikes and lockouts is lower in that country than in our own, so that a comparison between countries does not seem especially instructive as to the effect of organization per se in increasing strikes.

Lloyd, H. D. Country Without Strikes. Chap. I. p. 16.

New Zealand Law.

The main points of the New Zealand Law are:

1. It applies only to industries in which there are trade-unions.

2. It does not prevent private conciliation or arbitration.

3. Conciliation is exhausted by the state before it resorts to arbitration.

4. If conciliation is unsuccessful, the disputants must arbitrate.

5. Disobedience of the award may be punished or not at the discretion of the court.

The compulsion of the law is threefold: compulsory publicity, compulsory reference to a disinterested arbiter—provided the disputants will not arbitrate voluntarily—compulsory obedience to the award.

It does not forbid nor prevent disputes, but makes the antagonists fight their battles in court according to a legal code instead of the ordinary "rule of war."

There is no "making men work by law," and no "fixing wages by law." The law only says that if they work, it

must be without strikes or lockouts, and that, if they cannot agree as to prices, the decision shall be left to some impartial person, and not fought out.

Report of the Industrial Commission. Vol. XVII. pp. CXI-CXIII.

Compulsory Arbitration.

The wide-reaching influence of the greater labor disputes upon the general public interests has led many persons to advocate compulsory arbitration, at least as regards certain classes of strikes and lockouts. As yet, however, legislation establishing compulsory arbitration has been enacted only in the Australasian colonies of New Zealand and Western Australia. In both of these colonies the system has been made very wide reaching. The New Zealand act dates from 1894, while that of Western Australia was only passed in 1900. The parliament of New South Wales also had under consideration in 1900 a bill very similar to the New Zealand law, and it was strongly advocated by the attorney-general of the colony and by many others, although it failed of passage. The experience in Western Australia, whose act is almost identical with that of New Zealand, has, of course, been so short as to afford few lessons. The New Zealand experience, however, deserves more careful consideration.

The New Zealand law authorizes the formation of organizations of employers and organizations of employees, or the registration of existing organizations. By registration the organizations become corporate bodies with power to sue and to be sued, and to make enforceable agreements regarding the conditions of labor or other matters. The provisions of the law regarding trade agreements are especially significant. Such agreements, if made between duly organized unions and either individual employers or associations of employers, are enforceable before the court of arbitration, subject to the same penalties as an infringement of the decisions of that court.

The law makes provisions for conciliation by local boards and for the authoritative decisions of disputes by a central court of arbitration. The colony is divided into several districts, in each of which there is a board of conciliation of four or six members, half elected by the employers' unions in the district and half by the registered labor unions. Unorganized workingmen and employers have no share in the election: and indeed unorganized workingmen are not subject to the jurisdiction of the boards at all. The central court of arbitration consists of three members appointed by the governor, one from candidates recommended by organizations of employers, and one from among those recommended by organized workingmen, while the third is a judge of the supreme court of the colony.

Any employer or association of employers may apply to a board of conciliation as regards a dispute with duly organized employees, and organized employees have the same right. The boards of conciliation may compel both parties to appear, and have ample power to summon witnesses. Their chief function is to ascertain facts and to endeavor to reconcile the disputants. They cannot render binding decisions. If no settlement is reached the board makes a recommendation in writing, and either party may appeal to the court of arbitration for a further investigation and for a binding decision.

If the decision of the court has regard to an organization of employers or employees, all persons who are members thereof at the time, or who thereafter become members, are bound by the decision. Any employer or any organization or member of an organization violating the terms of an award is subject to penalty, the amount to be determined by the court of arbitration. The penalty which may be assessed against any person or organization shall not exceed £500, nor shall the aggregate of penalties against all parties exceed the same amount.

Under this law the New Zealand boards of conciliation and court of arbitration have actually exercised a very power-

ful influence during the past few years upon the conditions of labor. About one hundred cases have been brought before these authorities up to March 31, 1900. It appears that comparatively few settlements have been made by the boards of conciliation, the possibility of appeal to a higher authority leading the parties to give but little attention to the lower boards. In some instances, of course, amicable agreements have been affected through the boards of conciliations or the court of arbitration, but in a very large number of instances binding decisions have been rendered. Many of these decisions are highly elaborate, fixing the general wage scales, hours of labor, and working rules for all organized workingmen in a trade in a given locality, and in a few instances decisions have related to a trade throughout a colony.

Opinions as to the advantages and disadvantages of the law differ greatly, and it is practically impossible to form a conclusive judgment. Workingmen apparently have been generally satisfied. They are to a large extent organized and in a position to take advantage of the measure. A very large majority of the cases have been initiated by the laborers, and a large majority of the decisions also have resulted to their advantage. It is, however, to be especially noted that the past few years have been years of great prosperity in New Zealand and of advancing prices. Whether the workingmen will be equally satisfied when conditions are less prosperous and when, perhaps, reductions in wages will be made, is more doubtful. Employers have in many instances, expressed themselves against the arbitration system, but apparently it has gradually increased in favor with them. The fear expressed by the opponents of the law at the outset that it would drive capital out of the colony and close up industries seems not to have been justified; although it is impossible to know whether the prosperity of recent years has been actually enhanced by the system or whether it has been due entirely to other causes, and, perhaps, even in despite of a retarding influence from compulsory arbitration.

It is also to be remembered in judging the significance of the New Zealand experience that the entire population of the colony is only about 800,000 persons, and that its industries are chiefly agricultural in which labor organizations and labor disputes are not likely to be found in any country. Furthermore, the newness of the country and the relatively small population, as compared with the natural resources, makes the average per capita wealth higher than in most cases, and narrows the gap between the employing and the working classes.

The representatives of employers and workingmen, who have testified before the Industrial Commission, have almost uniformly opposed compulsory arbitration. Their arguments are more fully set forth in the digests of testimony of various reports of the commission. (See volume 4, pp. 149; volume 7, pp. 127; volume 12, pp. clvii.) Several state boards of arbitration in the United States have also, from time to time, expressed their opinion against compulsory arbitration as a general principle, and one or two of the boards have specifically opposed it in any form. These boards in New York, Indiana, Ohio, and Illinois, however, have favored compulsion in certain cases, especially as to disputes which, on account of their bitterness and violence, endanger life and the public welfare, or which, like those on great railroad systems or on street railways, entail great inconvenience and loss upon the people generally. The United States strike commission, which investigated the great railroad strike of 1894, reported against compulsory settlement of labor disputes on railways, but advocated the establishment of a commission with power to investigate such disputes and to recommend terms of settlement to the parties, as well as to make public its opinions as to the merits of the dispute. The board also advocated legal enforcement of the decisions of arbitrators regarding labor disputes, provided both parties agreed in advance to arbitrate. The New York board of arbitration has on several different occasions gone further and recommended that the conditions of labor on steam and street railways should

be determined either by mutual agreement between the parties, or by arbitration by a board established by them or by the state board of arbitration; that strikes and lockouts should be prohibited; and that resignation or dismissal from the service should be permitted only after due notice. The Ohio board of arbitration has advocated that, in case any dispute is carried to such a length as to threaten the general public welfare, the state board of arbitration should be permitted to interfere and to render a binding decision regarding the points at issue.

The Indiana labor commission has adopted a suggestion, not infrequently made in other quarters, that the law should require the parties to any labor dispute to attempt conciliation, in accordance with some proper method, before actual cessation of employment. This board also takes the same position as the Ohio board regarding compulsory intervention in prolonged and serious strikes.

Final Report of the Industrial Commission. Vol. XIX. pp. 861-2.

Compulsory Arbitration.

By compulsory arbitration proper is understood legislation which, under legal penalties, compels the parties to labor disputes to submit them to disinterested arbitrators, in case settlement can not be reached within the trade, and to abide by the decisions of such arbitrators. The only countries in which this system has been established are the British colonies of New Zealand, South Australia, and Western Australia. The New Zealand compulsory arbitration law dates from 1894. It applies only to trades in which labor organizations exist. Such an organization may compel employers to arbitrate, and employers possess a similar power toward labor organizations. Several district boards of conciliation are established which have authority thoroughly to investigate disputes brought before them, to conciliate or to render formal decisions, these

decisions having, however, no legally binding force. There is also a single court of arbitration for the entire colony, to which appeal may be taken from the boards of conciliation. This court may render decisions which may be enforced by fines upon organizations or individuals.

Opinions differ as to the effect of the New Zealand statute, but it seems that up to the present time, 1902, under conditions of general prosperity and advancing prices, it has worked with reasonable success. Many decisions affecting the general conditions of labor of large bodies of men have been rendered by the court of arbitration, and they have usually been carried out by the parties with little opposition. It is probable, however, that the conditions in New Zealand, a small country of only 800,000 people, primarily engaged in agricultural pursuits, are so different from those in a great industrial country like the United States that her experience furnishes little instruction as to the applicability of compulsory arbitration here.

The sentiment of both employers and employees in the United States is almost universally opposed to compulsory arbitration as a general method of settling labor disputes. They deprecate it on the ground that it would involve the ultimate reference of even the most important matters, the general terms of the labor contract, to persons or authorities entirely outside the trade concerned, and that it would be difficult to enforce the decisions of arbitrators without most rigorous measures. Both of these difficulties have already been discussed under other heads.

Nevertheless, there are many persons who believe that compulsory arbitration is desirable as a last resort in the case of those few great disputes which affect with especial severity the general public interests. The great railway strikes of 1877 and 1894, for example, interfered with the safe and prompt transportation of millions of tons of freight, involving enormous losses to shippers and even threatening starvation to the inhabitants of several cities; they interfered, too, most seriously with the transportation of the mails and with

the movement of passengers. The great street railway strikes, which have occurred in several of our leading cities in recent years have almost paralyzed the business of the people of those cities. In connection with many of these more serious strikes, moreover, riots and violence have occurred, lives and property have been destroyed, while great expense for the purpose of suppressing disorder has been rendered necessary.

In view of these circumstances many hold that it may be wise entirely to prohibit strikes and lockouts in certain special industries, particularly those having to do with the transportation of persons and commodities, and to compel employers and employees in these industries to adjust their differences by collective bargaining and trade arbitration, with ultimate appeal to the binding decision of some impartial tribunal. It is also maintained that where, in other trades, a strike has become so prolonged and bitter as to threaten lives and property, the government should intervene and compel arbitration. Those who take this position hold that if employers and employees knew that their differences might ultimately be carried to some outside authority, they would be the more disposed to establish methods of collective bargaining and of arbitration and conciliation within the trade itself, and would be the more disposed to reach peaceful settlements by such trade methods rather than to push their differences to extremes. Should compulsory arbitration in either of the two classes of cases above named be deemed desirable, it would evidently be best first to exhaust every resource for the settlement of the dispute within the trade concerned.

If the principles of limited compulsory arbitration be approved, it would apparently be wise for the United States government to enact legislation on this subject to apply to interstate carriers. A national board of arbitration, such as has already been suggested, could be constituted the authority of ultimate appeal in the case of disputes between employers and employees engaged in interstate transportation.

Report of the Industrial Commission. Vol. XIV. pp. 46-8.

Testimony of John R. Commons.

I have been quite attentive to the subject of arbitration on account of my interest in compulsory arbitration. I have inquired among labor people as to what was their objection against compulsory arbitration, and I find that their objection is simply that they distrust the courts, and the employers, some of them, say that that is their objection. If that be so, whether the ground be sound or not, it is something that might be met in another way. We have to distinguish between the two elements of compulsion in the arbitration scheme. One is the compelling of the enforcement of the award, and the other is compelling the award to be made. Now I can not see why it would not be possible to divide those two propositions and enact a law, especially in the case of railroads and street cars, which would compel both parties to provide and especially to reach some sort of an agreement. If it were done by a shrewd judge or presiding officer, in the case of compulsory arbitration, he would act as a mediator, with the assurance on the part of both sides that if they did not themselves reach an agreement he would have the ultimate power of deciding. Now, I can not see, if that condition comes, why it is not possible to devise some way of simply compelling both sides to come into a court, or into some sort of a body, by which it should not be held necessarily that any one man should decide between the two, but that they should in some way reach an agreement. That, I understand, is largely the way it is done in New Zealand. At the same time we can not have a compulsory law until a great majority of the people are in favor of it, and I believe the people are in favor of such a measure at the present time. There are but a few employers—and it is mostly the employers, I believe—that would object, that stand in the way of arbitration. It was so in the anthracite case. There are but few employers that really reject it. The great majority of employers are in favor of it, and the compulsory law is simply a

necessity on account of those few that hold, as it were, a strategic position, for by refusing to consent to arbitration they can compel their competitors to refuse. A man that will not consent to arbitration will not have the right conditions in his business, and owing to competition can undersell the others. Now, the coercion principle is usually misunderstood in this country. It is not coercion in the sense that it is going to compel all employers or unions to submit, but is coercion with nine-tenths of the employers and nine-tenths of the unions which can be dictated to by this other tenth owing to its strategic position. If it is put in the law the public then has a right to demand peace. These few that are holding out and standing out against it—as they have an advantage, as long as we do not have some sort of compulsion they can not be brought into court to make some sort of an agreement. As to whether that could be done or not I do not know.

Outlook. 94: 648-9. March 26, 1910.

Measure to Prevent Strikes.

Mr. Robert Luce has introduced a bill in the Massachusetts legislature designed to prevent the constant disturbance of society by strikes and lockouts. Massachusetts has averaged nearly two-hundred strikes a year, and in the United States for the twenty-five years ending in 1906 there were 36,757 strikes and 1,546 lockouts. Less than five per cent of these, it is stated, were settled by arbitration. Mr. Luce's bill proposes that investigation shall be mandatory upon the application of either party, and that until such an investigation has taken place, and pending such an investigation, it shall be illegal to strike or lockout. He has taken the idea from the Canadian Law which has been in operation since 1907. It differs from the New Zealand Law in that its findings are not enforced by law, but, as in Canada, by public opinion. The experience of three years in Canada indicates that neith-

er capital nor labor is willing to run the risk of offending public opinion when public opinion is based upon an unprejudiced statement of the facts made after a careful investigation. Under arbitration in Canada about three per cent of the cases were settled by peaceful processes without the cessation of work. Under the new law ninety-seven per cent have been settled peacefully without cessation of work. Mr. Luce's bill retains the present Massachusetts Board of Arbitration and Conciliation, with all its powers, and simply adds this new element of strength. The Canadian Law applies only to public utilities and to mines, but it is about to be extended to all labor disputes affecting fifty or more employees. The Massachusetts bill applies to all labor disputes affecting twenty-five or more employees. Employers and employees alike, must give at least thirty days' notice of any intended change affecting conditions of employment or with respect to wages or hours. The Canadian has no provision preventing employers from bringing in strike-breakers during the investigation. As this does not seem fair to labor, Mr. Luce has incorporated in his bill a clause to prevent it, suggested by Mr. John G. O'Donaghue, of Toronto, who served as a labor representative on many of the Canadian boards of investigation. Under the Canadian Law, before the application for a board of investigation is made, it is necessary for the employees to pass a vote authorizing a strike. As this tends to increase hostilities, Mr. Luce has provided that the applicant shall merely declare that it is his belief that a strike is seriously threatened. Another improvement upon the Canadian Law is the provision for a more speedy investigation. The board must be organized within fifteen days of the receipt of the application, and a statement of the findings must be made within ten days of the conclusion of the investigation. The applicant may call for either the permanent board or a special board of three constituted in the usual way. The hearings need not take place in public, and the board may decline to allow attorneys to appear. Both of these provisions seem to have made it easier in Canada for the parties to agree. Penalties

have been provided for violations of the law either by employers or employees, but not so much dependence is placed upon penalties as upon respect for law.

The two principle objections raised to it by the labor delegates were, first, that in the building trades and some cases the work would be finished before the findings could be published; and, secondly, that the advantage of the right to strike suddenly was one which they could not afford to give up. The answer to the first objection is that it applies to only a very small number of cases; that if their cause is a just one, the finding will be in their favor; that it will establish a precedent for the next job; and that while the employer in subsequent contracts may disregard the finding for a time, public opinion will finally force him to comply with it. The answer to the second is, that the hours of labor, the wages, and the general conditions are such to-day that there is no justifiable excuse for disturbing the community by strikes, except as a last desperate resort. This right is preserved by the bill. The substitute bill proposed by the labor delegates reserved to them the right to strike first and reason afterward, a position which is manifestly untenable. The best answer to the Massachusetts labor delegates is the action of the labor organizations of Canada. After a three years' trial of the law, both the Canadian Federation of Labor and the Dominion Trades and Labor Congress have passed resolutions approving the Canadian Law and asking for its extension to all industries. They have even gone so far as to send labor delegations to Ottawa requesting that this be done. The Grand President of the Canadian Brotherhood of Railroad Employees writes: "The law as it stands is, in my opinion, a good one. The only change I would suggest which would be of advantage would be to widen its scope to take in all classes of employment." The Secretaire General of the Parti Ouvrier du Canada writes in a similar vein, and the Grand Secretary of the Provincial Workmen's Association also approves. The opinion of the Canadian labor leaders, based on actual experience, ought to outweigh the opinion of some labor leaders based on surmise and suspicion.

Independent. 54: 2219-20. September 18, 1902.

Compulsory Arbitration. William A. Stone.

The relations existing between capital and labor are of vital importance to the whole country. If these relations are cordial business prospers. All classes—laborer, artisan, merchant and capital—share in the benefits. But if difficulties arise, and they be not settled amicably and strikes follow, both employer and employee suffer—often the public as well.

In most instances strikes are local in their character—that is to say, they affect directly a few hundred or, at most, a few thousand persons—principally the strikers and their families and the employer and his business. Occasionally differences between capital and labor are of a nature or the industry affected is of such importance as to arouse general public interest and affect the welfare and well-being of the entire country. Of this character is the present coal strike in the anthracite region of Pennsylvania.

When a strike of the nature now prevailing occurs—one that threatens nearly every business interest and home in the state, and the interests and homes of millions of people in other commonwealths as well, it becomes evident that local differences between capital and labor are of greater general concern than the public usually believes. Strikes that are felt only in a limited area, and those that affect the industries or the welfare and prosperity of a state or of the country, differ only in degree. The evil is the same in each instance. Both are equally against sound public policy. Both need to be prevented, if possible.

Efforts have been made to bring about adjustments of difficulties between capital and labor and to prevent strikes by means of voluntary submission to arbitration. In the great majority of instances all these endeavors have proved futile. A National Board of Arbitration composed of men of prominence, distinguished for their knowledge and grasp of labor and business affairs, was formed. But even this board, established under what seemed the fairest auspices, could not prevent a strike like that which now exists in the anthracite coal fields

of Pennsylvania. It requires both parties to consent to voluntary arbitration; and, in this instance, both parties were not disposed to place their differences in the hands of others for adjustment. The consequence is that many industries are seriously harmed; numbers of business men are suffering grave financial losses; and the poor are confronted with the probability of grave suffering in the near future. The voluntary arbitration system has failed at the critical juncture, when it was most urgently needed.

When, as has become clearly evident, efforts to induce capital and labor, in every case, to submit to arbitration all disputes that arise between them are failures, the public good requires that other and more effective means be taken to accomplish a settlement. Universal arbitration between labor and capital has become a necessity for the continued prosperity of the country. Struggles between employers and employees that disturb business and public tranquility should not be permitted to exist. It is a mistake to declare that they concern only those engaged. The interests of the community are of far greater importance. Since many disputes cannot be settled by voluntary arbitration, it becomes the plain duty of the commonwealth to step in and interfere.

Universal arbitration can be established only by means of legislative action. It is impossible to reach this conclusion without regret; but experience and the public welfare seem to make legislation the necessary and the only alternative. In the majority of cases, as long as merely voluntary arbitration is the sole means of peacefully settling labor disputes, one side or the other will declare that there is nothing to arbitrate; and so, perhaps, precipitate a strike, with its resultant inconveniences and miseries. If only employer and employee were concerned they might fight it out to the end without the active concern of any except humanitarians. Unfortunately such struggles are more far reaching, more disastrous in their results. The greatest sufferers are not the actual participants in a strike of small or great magnitude. They are the people at large. The relation between capital and labor ceases then to be a private

matter, to be settled without outside interference. It becomes one of paramount public importance.

A law that would settle labor disputes between employer and employee must, of necessity, be a compulsory arbitration law, to be strictly enforced. Moreover, the award must be final and conclusive. It must not be carelessly considered and drawn. No measure demands more careful attention or better judgment.

Legislation to be effective in settling labor questions must be permanent. To prevent strikes and to settle labor disputes without strikes, to adjudicate labor disputes as all other difficulties are in some way adjudicated, the matter must be approached from the standpoint of the public good alone. The framer of any legislation looking to compulsory arbitration must be wholly free from the influence of any desire for the labor vote or for campaign contributions from the employer. He must put aside all political considerations. He must be actuated purely by an unselfish and earnest desire to serve the whole people. In other words, the legislation must be framed wholly from a civic standpoint.

Experience teaches that strikes endanger life and property. Whenever either is in jeopardy society is menaced. Because of these conditions alone the National Guard were ordered to the anthracite coal field. The presence of the state troops is not to aid the operators to crush the strike or the strikers. They are there simply to preserve order, to prevent rioting and bloodshed.

Since strikes frequently lead to disorder, rioting and bloodshed, it is manifestly proper for the state to legislate for their prevention. If diphtheria, small-pox, or any contagious or infectious disease invades a house the health authorities are given full power to quarantine the buildings, and, if necessary, to shut off travel on the thoroughfare where it exists. So it seems proper—undoubtedly proper—to enact legislation that will effectually and permanently prevent strikes. The state has an undoubted right to legislate, and does legislate, for the safety of miners as well as of people in mills and factories. If fire

damp shows itself in a mine, that mine can be closed by order of the authorities; and it remains closed till all danger is past. Why, then, should not the state have the right to compel arbitration between employer and employees to the end that strikes may be prevented and the safety and peace of the public be preserved?

Thus any legislation providing for compulsory arbitration should be considered and drawn not merely in the interest of employer and employee, but for the protection of life and property, as a police regulation benefiting the general public and protecting society. In a strike like the present one in the anthracite coal region the general public suffers, and, in fact, the whole country suffers, as well as the employer and employee. The participants must yield individual rights for the welfare of society and the public. Private interests must always be subordinated to those of the public. The questions in dispute between the coal operators and the miners, or of any other business or industry, are personal and of no public concern so long only as the results arising do not affect the convenience or business interests of the people of the state and the country. The moment the people and business are inconvenienced the state has the assured right to interfere by framing such laws as will prevent a recurrence of the trouble.

We must recognize strikes as they have been, are, and will continue to be; and we must deal with them for the public good. I believe it is possible to frame a law from this standpoint—a law that would settle unfortunate disputes between employer and employee speedily and effectively and without strikes.

Bulletin. Bureau of Labor. 20: 1-29. No. 86. January, 1910.

Canadian Industrial Disputes Investigation Act of 1907.
Victor S. Clark.

The purpose of this article is to review the operation of the Canadian Industrial Disputes Act from April, 1908, to August, 1909. An earlier report, published in the Bulletin of

the Bureau of Labor for May, 1908, describes the purpose, administration, and results of the law, and sentiment toward it during the first year it was in force, and contains a detailed commentary on its provisions. Since then the act has not been amended, but subsequent experience enables a maturer judgment to be formed of its strong features, as well as of the deficiencies that accompany such experimental legislation, and makes possible a fairer estimate of its usefulness. But the nearness of Canada, the similarity of its industrial conditions to our own, the fact that this law directly affects trade unions and corporations on both sides the border, and the advocacy of like legislation in the United States make of value to Americans current information upon this subject.

The act applies to all public utilities, including municipal service corporations, transportation companies of all kinds, and occupations (like stevedoring) subsidiary to transportation, and also to coal and to metal mines. In these industries and occupations it is unlawful for employers to lock out their workmen or for employees to strike until an investigation of the causes of the dispute has been made by a government board appointed for this particular case and the board's report has been published. After the investigation is completed and the report made, either party may refuse to accept the findings and start a lockout or a strike. The investigating board usually tries by conciliation to bring the parties to an agreement, so that the functions of the board considerably exceed those of a body appointed solely to procure information.

The law does not aim at compulsory arbitration or to force men to work against their will after all chance of an amicable settlement has disappeared. Neither employer nor employee is compelled to become party to a bargain he does not voluntarily accept. The purpose of the act is limited to discouraging strikes and lockouts in industries that serve immediately the entire public, and to preventing the cessation of such industries through the arbitrary or unwarranted acts of either employers or workmen. It seeks to enforce the right of the people who use railways and burn coal, for instance, to know on how just

grounds, in case of an industrial dispute, they are deprived of so necessary a service or commodity.

The procedure and machinery for accomplishing this end are as follows: In the industries in question any change in working conditions affecting hours or wages, whether demanded by employers or workers, must be preceded by thirty days' notice. If such a contemplated change, or if any other point at issue between the parties, threatens to end in a strike or a lockout, either party may upon affidavit to that effect apply to the Dominion Labor Department, which has recently become a separate ministry, for a board of investigation and conciliation. Thereupon the minister of labor or his deputy appoints a board of three members, one upon the recommendation of the employers, another upon the recommendation of the workers, and a chairman selected either by the first two members of the board, or, in case they fail to agree, by the government. If the workers or the employers, either through indifference or in order to block an investigation, refuse to recommend a representative for appointment, the minister of labor selects at his discretion a suitable person to fill the place. The members of the board are paid for the time they serve and for the necessary traveling expenses incurred. The government also provides for necessary clerical expenses and for the fees of witnesses called by either party.

Each board controls its own procedure, which varies greatly under different chairmen and in different cases. Usually the most information is obtained and the quickest settlements are made where the board discusses informally with committees representing both sides in joint session the various points at issue without laying much stress on technical evidence. Such informal meetings are apt to reveal sentiment, air grievances, and explain misunderstandings. But some boards, on account either of the judicial training of their members or of the technical character of the points at controversy, have conducted their proceedings like a law court. If the board succeeds in bringing the parties to an agreement, it embodies the terms of this agreement in its findings. But if it is unable to end the contro-

versy it presents a report, or majority and minority reports, describing the conditions that cause the dispute and usually recommending what appear fair terms of settlement. The report or reports are at once published by the government, and the employers and employees involved, if unable otherwise to agree, may then resort to the last measures of industrial warfare.

The penalty for causing a lockout before the board has reported is a fine upon the employer ranging from $100 to $1,000 and the penalty for striking, under like conditions, is a fine of from $10 to $50 upon each striker. Prosecutions are brought by the aggrieved party, not by a public officer.

Statistics only imperfectly present what has been accomplished by the law during two years and a half of operation. There is a record of the number of boards appointed and of the number of agreements and disagreements following their sessions, of approximately the number of workers affected by the disputes investigated, and the number and duration of lockouts and strikes, lawful and unlawful, which have occurred in industries subject to the act. But it is not possible to measure the margin between these statistics and the figures which would have represented corresponding data if the act had not been in existence. It can not be assumed that every settlement made by a board stands for a case where a strike would have occurred if no board had been appointed or that these settlements were in each instance better than a settlement would have been without government intervention. It is not absolutely certain but that in exceptional cases a strike or lockout is a more wholesome culmination of an aggravated dispute than a series of temporizing and unsatisfactory compromises.

The following table shows the interventions with and without strikes from March 22, 1907, when the law went into force, to the latest information obtainable, in August, 1909:

Industry	Boards appointed	Employees affected	Illegal strikes (begun before or pending investigation)	Strikers in illegal strikes	Legal strikes (begun after report of a board)	Strikers in legal strikes	Settlements without strikes
Coal mines	25	27,400	5	6,450	2	4,700	18
Metal mines	5	900	.....	.....	2	625	3
Railways	17	27,600	.....	.....	1	5,000	16
Electric Railways	4	1,100	.....	.....	.....	.....	4
Shipping	5	2,700	3	2,200	.....	.....	2
City employees	1	300	.....	.....	.....	.....	.....
Cotton mills	2	5,200	.....	.....	.....	.....	1
Shoe factories	1	300	.....	.....	.....	.....	1
	59	65,500	8	8,650	5	10,325	45

In appraising the value of board intervention, mere numerical statements of the number of hearings resulting in settlements and the number followed by strikes may be more misleading than enlightening. The probability of reaching an agreement is much greater in a case affecting a weak union or a small number of employees than it is in one backed by a strong organization and reaching a large body of workers. Yet if the strong union has prestige and a well-established policy of collective bargaining, and exercises sufficient control over its own members and the industry to avoid frequent or petty strikes, the work of the board is often made very easy. In possibly four disputes out of five, or nine out of ten (in case of such a union), government intervention simply substitutes a public for a private agency in making a bargain. But the tenth dispute may threaten consequences of vital concern to the whole community, quite justifying what would be unnecessary precautions in the other nine disputes. Finally, in dealing with a large body of unorganized and unskilled workers, of lower intelligence as a rule—such as wharf laborers—a board faces a problem of unusual difficulty, because the men have no responsible representatives and because the unenlightened and undirected sentiment of such workers veers with the uncertainty of the wind. The

relative success of the act in avoiding actual cessation of work has been greatest where it has dealt with strong unions of educated and highly skilled employees, and least where it has dealt with unorganized or partly organized common laborers. Between these classes come the metal and coal miners, who are well organized, but not sufficiently skilled to be protected from the competition of the unspecialized labor market. Most miners' unions adopt collective bargaining, but employ the strike as subsidiary to their negotiations more frequently than do the railway orders; so mining disputes usually threaten a strike in good earnest and the intervention of a board in such disputes seldom is a perfunctory service.

The application of the law to railway disputes covers what would be the chief field of jurisdiction of a similar federal statute, should one ever be enacted, in the United States. The Canadian boards have investigated seventeen such disputes, and in only one instance has their decision been followed by a strike. No strikes have occurred prior to the publication of a board's decision. These disputes have been the most important, in respect to the number of employees affected, the seriousness of the points at issue, and the prospective disturbance of business that have arisen in Canada since the law was passed. The settlements have applied not only to railways in that country, but also to considerable sections of railway in the United States, and they have covered every organized branch of the railway and railway telegraph service. While most of these controversies might have been settled by direct negotiation without the disputes act, yet two or three of the crises thus tided over were so acute that an extended, protracted, and bitter strike was seriously to be apprehended. There seems to be little question that the boards averted these strikes, with one exception to be mentioned, and in so doing they performed a service of greatest value not only to the disputants but also to the general public, and saved money losses far exceeding the cost of administering the law.

Observation and interviews with different classes of people in all parts of Canada indicate that the disputes act has with some

exceptions the support of the general public and of employers and of the parliamentary "laborists" and of the unions not directly affected by its provisions. The officials of the railway orders are divided in their opinion, but on the whole are more favorably inclined toward the law than when it first went into operation, and the rank and file of these orders is probably even more friendly. The leaders and the aggressive membership of the western mining unions are vigorous opponents of the act, although there is a considerable quiet element in these organizations that probably regards it with more favor. The Nova Scotia miners officially indorse the law, and it has support among their members, but the result of a referendum vote upon it would be difficult to predict. Some public men regard as significant that at the last general elections the Liberal party lost seats in several important labor centers, such as Glace Bay, Cobalt, Winnipeg, and one or two points farther west, where the act had recently been applied to serious local disputes.

In conclusion, the Industrial Disputes Investigation Act seems to be gaining support in Canada with longer experience, and has very few opponents outside of labor ranks. The labor opposition is strongest where socialism is strongest. There seems to be less unqualified opposition to the law among the members of the unions than among the officials, but this is stated as a conjecture rather than as an assured fact. The act has afforded machinery for settling most of the disputes that have occurred in the industries to which it applies; but in some cases it has postponed rather than prevented strikes, and in other cases strikers have defied the law with impunity. Most of the amendments proposed look toward perfecting details rather than toward revising the structure of the law. There is no likelihood that the act will be repealed, or that it will be extended to other industries or toward compulsory arbitration. The most serious danger it faces is the nonenforcement of the strike and lockout penalties in cases where the law is violated for the express purpose of weakening its authority. The adoption of a similar statute in any state or by the United States government, whether desirable or not, is likely to be opposed by organized

labor, and probably could be secured only after some industrial crisis profoundly affecting public opinion had centered popular attention upon the question of strike prevention. The enforcement of the penal clauses of the law would probably be more difficult in the United States than it is in Canada, and for that reason the success of such a statute somewhat less probable. Under the conditions for which it was devised, however, the Canadian law, in spite of some setbacks, is useful legislation, and it promises more for the future than most measures—perhaps more than any other measure—for promoting industrial peace by government intervention.

Report of the Industrial Commission. Vol. XVII. pp. 693-5.

Advantages and Difficulties of Arbitration.

Joseph D. Weeks.

There are two, possibly three, objects sought in the formation of boards of arbitration and conciliation. The first is to prevent differences between employed and employers from becoming disputes, and leading to strikes and lockouts, and the second to settle disputes that have unfortunately arisen, and to put an end to strikes and lockouts should they occur. The third object which is possibly included under the first mentioned, is to promote mutual confidence and respect between these two classes. The only sufficient reason for the adoption of the principle is that it accomplishes these purposes.

Whether it has accomplished these objects in the trades in which it has been fairly tried in England can be judged by the facts set forth in the preceding pages on this report. For myself, I do not hesitate to say that it is not only the best method yet devised, but the only rational one for adjusting the relative rights of employers and employed under the present constitution of industrial society. In making this statement, I do not forget the method by strikes and lockouts, nor do I consider it. These methods are neither rational nor civilized. A victory or defeat for either side, under the pressure

of strikes and lockouts, neither proves or disproves the justice of a position assumed; but it is fair to infer that an award given by a board of arbitration, after due consideration, would be as near just and right as it is possible for human judgment to reach. It is to be observed, also that a decision of a board should not be, and in most cases is not, regarded as a victory by one side or a defeat by the other. There is no exultation over victory, no smart over defeat, nor a determination to wait for a convenient season and revenge. The burning questions that arise are settled in a friendly manner.

Another advantage of a permanent board of arbitration, with stated meetings, is that it furnishes an opportunity, seldom possessed without these, for the workmen to obtain a knowledge of the needs of trade and the demands of future both upon them and the manufacturers. Labor troubles are as often the result of a lack of information as to the true state of a trade as of any other one thing. It is true that workmen may be told the facts rendering a reduction necessary; but they are not inclined to credit them, and believe that affairs are not as represented. In the working of the English boards, especially in fixing prices, notice is taken of the state of trade and competition with other countries and other districts, and the information thus gathered, not by the employer members, but by the board, is brought to bear in the settlement of wages.

This suggests another and a most important advantage of these boards. Accepting the fact that unions of workmen exist, and will doubtless continue to exist, it is only through boards of arbitration or conciliation of some kind that the trades unions and those employers can meet except as antagonists. The manufacturer and his workmen can never be brought face to face to discuss trade questions, except when their interests are hostile. With these boards there is a possibility of meeting as fellow-members of the same trade, whose interests are indissolubly joined.

Another and perhaps the most important advantage of these boards is the bringing of employer and employed together, and thereby increasing their respect and esteem for each other, and

the consequent growth of confidence. One of the greatest barriers to an understanding between capital and labor is a feeling on the part of the workingmen that they are regarded as holding a servient position, and a feeling on the part of manufacturers that theirs is a dominant one. Out of these feelings, which are altogether too common, come a brood of evils that have cost our industries dear. Even, when nothing is farther from the mind than the thought of cherishing such sentiments as these, suspicion, ever quick to grasp an appearance for a reality, catches at some chance word, and all the horrors of a labor war are the result.

But the chief advantage of these boards is that they form an open market where labor and capital can come together, and in a friendly spirit fix what is "a fair price for a fair day's work." In these boards the statements made by each side can be challenged, each other's arguments answered, and estimates impeached. I verily believe that, without limiting the influence of fair competition, boards of arbitration, properly worked, afford the best means of fixing the market price for a fair day's work. I believe, moreover, that their action has a tendency to secure the maximum prices which are consistent with steady employment, and that the presence of an umpire prevents the ruinous consequences to both parties which follow separation upon a disagreement.

Difficulties and Objections

The chief obstacle encountered in the formation of boards of arbitration and conciliation, as well as in the earlier operations, of the same, is suspicion and prejudice. These are the sources of some of the most bitter and ill advised strikes and lockouts that the history of industry has known, and it is this tendency to quarrel upon what Judge Kettle so aptly terms "matters of sentiment" that stands most in the way of arbitration. Happily, these feelings are passing away; a more intimate knowledge and a more generous estimate of the acts of each other are removing this suspicion and prejudice. Once boards are established, their very existence, as we have shown, tends to

the removal of all sources of strife founded upon passion or ignorance.

Another difficulty that arises immediately upon the decision to form a board is the selection of an umpire. Shall he be a permanent officer, or chosen to decide a particular case? Shall he be practically acquainted with the trade in which he is called to act? Or is this not necessary, so that he have the other qualifications? These are questions that it seems almost impossible to answer from the results of experience.

On the part of the workmen there have been very strong objections at times to what they term "a stranger referee," but it will be found that the success of a referee will not depend upon his practical acquaintance with the trade so much as it will upon the man himself. If he is at all fitted for his responsible position in other ways he can gain sufficient knowledge of the trade to enable him to give a just and intelligent decision. It seems, however, advisable that when it is possible, the referee should be an officer selected by the board, with a tenure of office the same as the board. It is not well to wait until the struggle begins, and each side, perhaps is striving for victory and all they can get before the one who is to decide between them is named. It is best to select him when judgment and reason rule. In this country, I think, little difficulty will be experienced in securing umpires. I think it is possible to name men in our own State in whose fairness and judgment our iron and coal industries would be willing to confide.

When the practical operation of these boards is considered, a very serious difficulty is found in the absence of any recognized definite principle as a basis on which awards shall be made. For example: First and foremost among industrial questions is that relative to the wages of labor. When this is before a board for decision the question arises at once. What shall be the basis upon which the award shall be made? It is because of this very difficulty that arbitration boards exist. If there were such a basis definitely established and universally acknowledged the decision as to wages at a given time would be a simple question of arithmetic or bookkeeping. It is to

endeavor to discover what is fair and right at a given time that these boards are organized. As a matter of information, it may be said that in the practical operation of the boards, while all the facts relative to prices, competition, demand, and supply, both of labor and products, are considered, wages are generally based on the selling price of the articles produced. Mr. Kettle, in a noted arbitration in the coal trades, found a certain date at which the wages paid for work about the colleries were satisfactory to both sides. This became the ideal, and served to fix in a general way a ratio of wages to prices that would be a satisfactory one to both parties. Due notice was taken of any changes that had occurred that should serve to increase or diminish this ratio, such a reduction in the hours of labor increased expense from mine-inspection laws, etc., and the arbitrator in his award endeavored to approximate this ratio as near as could be done without injustice or injury.

It has been objected to this course that it involves an exposure of secrets in connection with one's business that a manufacturer should not be called upon to make. To arrive at the wages paid and prices received for any commodity at a given time an inspection of books is necessary. This objection must arise from a misapprehension of what is really done. The books are not brought into the board, nor are the arbitrators as a body, nor any of them, permitted to inspect them. An accountant, sworn not to divulge the details, but only the results and these only to the board, unless they direct differently, is elected. He ascertains, not how much it has cost to produce an article, unless so agreed upon, nor how much profit has been made, but what was the actual selling price of the commodity at the times desired. There can be no objection to this. No secrets are divulged, the accountant covering his work in such a way that it is impossible to trace a sale.

It is further argued, as against arbitration, that an umpire may make mistakes. They are human and consequently liable to err. What would be the result if they did? It would be a very careless or ignorant umpire, one who had no business to occupy the position, who would make a mistake of, say 2 per

cent, in his award. This would be, if the award held for six months, equal to about half a week's work—3 days. Would not this loss be better than a strike or lockout for probably many times this? A more pertinent answer to this objection might be to ask the question whether an arbitrator is any more liable to make a wrong decision than a strike or lockout? That is, is cool deliberation more liable to err than passionate impulse?

There is another objection that I imagine will have more weight in England than in this country. It is that arbitration is an attempt to interfere with the operation of natural laws, by which term is meant the politico-economical theories of Adam Smith and his successors and followers. It is not germane to the purpose of this report to discuss the truth or falsity of these theories. It is enough for us to say that at present our knowledge as to industrial laws is extremely limited, and that the assumed facts upon which theories have been based, or from which these laws are deduced have been questioned by some able political economists. However, this may be, the law of theory is good only so long as the facts or phenomena remain the same. There is nothing eternal in an economic law, and when the facts change or are modified, then the law, which is only a statement of these facts and their relations, changes or is modified. Would it be wise or truthful to say that the facts or phenomena of labor have not undergone a wonderful change in the past century? Have not elements been introduced that promised permanence; that have produced marked changes in the relation of labor to employment, and demand changes in the statements of these relations, or, in other words, of the laws? But no argument is necessary on this point. No one will deny that interference with these laws is possible. Demand or supply may be increased or diminished, and thus, by a deliberate interference, changes to our advantage or disadvantage made to occur.

Just here I suggest the vital question as to the advantage or disadvantage of arbitration is to be asked. We must acknowledge that just so long as labor maintains its present con-

stitution interference with these so-called laws will occur. Now, is it better to interfere with these laws by the peaceful and friendly methods of arbitration and conciliation or by the destructive and hostile ones of strikes and lockouts?

Trade Unions and Arbitration

In the practical workings of arbitration trades unions have been found essential to its success. They have formed the center around which the entire body of labor, nonunionist as well as the unionist, has gathered and by which the workmen members of the boards have been elected. As the result of his long experience, Mr. Kettle says:

"I confess I see no organization but trades unions to fall back upon for the purpose of conducting the business of electing workmen delegates. It must be distinctly understood that I do not here intend that members of a trade society should elect the workmen's arbitrators. In all our staple trades there are unions, but the proportion of their members to the total number of workmen differs greatly in different trades. In all there are a greater number of what are called nonsociety men.

"All the workmen, whether unionists or not, should be represented on the arbitration board. I suggest that the trades-union organization is at present the most accessible means of carrying this out."

The organized union also gathers the facts upon which the arguments for the labor side are based, and it is in them that the moral power resides which has been found not only essential but sufficient to the enforcing of the awards of the board.

AFFIRMATIVE DISCUSSION

Report of the Industrial Commission. Vol. XIV. p. 142.

Testimony of John Graham Brooks.

I think the New Zealand Act, on the whole, works a great deal better than the most of us think it does; but I think the difficulty that Mr. Harris brought up this morning against Mr. McCormack is a very fundamental difficulty that has to be recognized—that is, forcing a man to carry on his business. And it has seemed to me very probable that for exceptional cases there will have to be worked out something like compulsory arbitration. I am not prepared to say what form that will take. It will have to be wholly exceptional and come only after the possibilities of conciliation and mediation have been carefully and elaborately tried, so that the responsibility shall be thrown on the employer by refusing this. Many practical men have begun to ask for compulsory arbitration. Two men in the anthracite region told me recently, "I wish to Heaven we had compulsory arbitration." I said, "What do you mean?" One said, "A great deal of trouble would be avoided if we had compulsory arbitration." I said, "Do you know the New Zealand Law?" "Never heard of it." "Why do you want compulsory arbitration?" "I have had so much trouble in dealing with unions, and especially with unorganized men, that I had a great deal rather have a properly constituted court to come before after we have tried conciliation than to have a state board or mob of labor men. The state board deals with little disputes, but the great disputes it can not do anything with." It is of interest to say that here are two men who know nothing about the history or the theory of it, speaking out of their own experience.

I believe some form of compulsory arbitration for specific cases that assumes the use of organized mediation beforehand—

I believe that may come about in this country; but the ordinary reference from a little country of 790,000 people—hardly bigger than the city of Boston, in America—is inadequate.

Annals of the American Academy. 37: 203-11. January, 1911.

Industrial Arbitration in Australia. Philip S. Eldershaw and Percy P. Oldin.

On the whole compulsory arbitration in Australia has been an undoubted success in so far as results can be judged during the comparatively short time the system has been in operation. In New Zealand, where it has been in vogue longer than anywhere else, the success has been unqualified. True the strength of the system has never been tested. There has been no decisive struggle between masters and men. But the absence of such a struggle is in itself a sign of efficiency, and of the satisfaction given to both the factors in industrial prosperity.

In New South Wales and the other states of Australia strikes have not been prevented, but certainly their number has been diminished, and, most important of all, the condition of the workers has been improved. This improvement continues, and with it it is certain that arbitration as a part of daily life will grow to be more and more an accepted fact in the minds of the community.

Of course the reason for this success may lie in the fact that, in Australia, industry is centralized. It is notable that the conditions of agricultural laborers are the only ones that the commonwealth act does not profess to touch; and it is in the ranks of these workers that sweating and similar evils exist to a large extent. It has been found extremely difficult to get anything like a uniform rate of wage and number of hours of employment suitable for this class.

There can be no doubt that compulsory arbitration with its concomitant awards rests on a sound basis. It is the business of law in every department of life to see that reasonable expectation is fulfilled. The employer has the right to expect

that the conditions under the expectations of which he makes out his scheme of life will have some degree of permanence. That the legislature in providing means for the satisfaction of each of these reasonable expectations is going beyond its sphere of action will hardly be maintained by the most ardent opponent of state interference.

Peters, John P., ed. Labor and Capital. p. 185.

Arbitration Courts a Logical Necessity.

Henry Demarest Lloyd.

Instead of being "A Country Where Work is War"—and civil war at that—America might be something very different. In little more than ten years we have had the battles of Homestead, Pullman and Hazleton, the massacres of policemen in Haymarket square during the eight-hour strike in Chicago, and of the coal miners at Latimer. In the street-car strikes of Cleveland, St. Louis, Albany, and other places, we have had riots bloodier than many South American encounters worthy of cablegram immortality. Our streets have been turned into shooting-galleries for troops who practise on the innocent and the guilty alike, on men, women and children, killing peaceable citizens and merchants standing within the shelter of their own places of business. Instead of this being "A Country Where Work is Hell," because it is war, and where we may have to breathe air thick with murder and dynamite whenever the buyers and sellers of labor have a difference of opinion about price, we might through all these years have had "A Decade of Peace" and the United States might have been "The Country without Strikes."

But we have already travelled—and suffered—three quarters of the way toward this delightful and inevitable consummation. All through the civilized world the people are working more and more toward arbitration. There are national and local and trade tribunals, public and private boards engaged in keeping the industrial peace. They have often succeeded in keep-

ing it, and keeping it well. They have done vast good and repaid a hundredfold all they cost in labor and money. This is the necessary preliminary work before the final solution of the problem. Arbitration of labor disputes by disinterested outsiders has been proved practical and beneficent. The next step is to organize it into an institution. We must lift it from the region of the private into that of the public, from the temporary to the permanent. We must make it the sure refuge of all instead of the accidental good fortune of a few, and create out of the general duty of arbitration the general right of arbitration.

Every man who says that public opinion is the real arbiter between labor and capital therewith gives away the whole case against arbitration courts. If it is true that public opinion is the arbiter, as every one says—the parties themselves are not the arbiters. The decision does not rest with them, but upon a tribunal outside of them. They have no absolute right to make war, distrub the peace, prosperity, and happiness of themselves, each other, and the people. If it is right to go outside the combatants to find an arbiter, it is right to find the best arbiter, and to make his intervention final and efficient.

We must have "a sound public opinion," as Bishop Potter says. But a sound mind must have a sound body, and if public their charters, their rights under the protection, also, of public opinion is the mind of society the law is its body.

We must have a "Board of Investigation," as Mr. Charles Francis Adams says. Our courts are boards of investigations, and their investigations investigate, because they have the power needed to compel the facts to come out into the light. But after investigation, what? What would be the use of the investigations of the courts if no one needed to mind what they said unless he felt like it?

We shall get this great blessing of peace in industry just as we got peace in our streets—by public opinion, but it will be public opinion plus a law. Democracy is public opinion plus the law, and obedience to the law is voluntary for the majority and compulsory only for the intractable.

All our institutions—the family, property, government—rest on public opinion, but it is not a public opinion without statutes, courts and sheriffs, not if need be, without the posse comitatus and the federal troops for secessionists.

It is the "Mind Cure" theory of politics that reform is to be secured by mere public opinion, and it is a theory which its advocates take care never to practise on themselves.

Only thieves and philosophical anarchists wish to leave the ownership of property to the settlement of public opinion, Let the gentlemen who advocate that those questions of the ownership of life and property which we call strikes and lockouts shall be made subject only to the pressure of public opinion convince us of their sincerity by offering to leave their property, their charters, their rights, under the protection, also, of public opinion without law. As Voltaire said to the proposal to abolish capital punishment, "Let the assassins begin the reform."

First the private effort, then the public institution. First the kindergartens of Froebel and his followers, then the kindergartens of the public schools; first the conscience of the slaveholder in the South—the Washington or the Randolph—freeing his slaves, the conscience of the Garrison or the Phillips who will not let the North remain the accomplice of a great wrong, and then the Emancipation Declaration and the Fifteenth Amendment. The private stage of arbitration is near its end. It has done its work by proving that labor disputes can be settled by disinterested outsiders. The next step is public arbitration, arbitration by law, arbitration by courts in which the settlement of labor disputes if otherwise irreconcilable, shall be organized as an institution.

In this age of "Agreement among Gentlemen"—to keep their hands out of each other's pockets only—the age of the duello seems remote indeed. Public opinion put an end to the duello, but it did so with the help of the officers of justice. Public opinion will put an end to the duello between labor and capital, and it will do so by precisely similar means.

There could be no better credential for the idea of arbitration courts than the fact that the leaders on both sides are

vehemently, passionately, opposed to it. Enemies in all else, union labor and union capital are friends in their fright at the suggestion that the public shall compel them to adopt rules of order instead of a military code. Organized capital and organized labor stop fighting each other to fight side by side against compulsory arbitration. Together they kill bills introduced into State legislatures for arbitration. They unite in widely advertised and expensively managed "Conferences" in opposition to it. They are class leaders of class movements seeking class advantage; the public is their quarry.

Without the help of any society, with no party, with no literary bureau, simply by the magnetism which justice draws from the general good-will and common-sense the agitation for arbitration courts makes headway day by day. It moves visibly along the line of the law of social progress never better expressed than by William Penn, the great commonwealth builder when he said: "The path of peace is justice, and the path of justice is government." That is, it is the path of public opinion plus a law.

That indeed is the proper test of a real public opinion. Public opinion does not begin to exist until it has crystallized into the resolute use of all the power that is necessary: 1st, to investigate; 2d, to decide; 3d, to execute. Public opinion in labor disputes cannot get publicity without law. It does it nowhere else. Public opinion in labor disputes cannot get obedience without law, compulsion. It does it nowhere else.

Whenever there is a strike or lockout the chief party in interest—the people—drifts helpless in the cross currents of a chaotic sea of public opinions which struggle in vain to be the "sound public opinion" for which Bishop Potter calls. All we have is a muddle of hearsay, street talk, newspaper reports, and "statements" put out sometimes in unscrupulous desperation by both contestants. This we must swallow without the possibility of disinfection by true publicity. The public does not know the facts. It knows it does not know them and it knows it cannot know them.

This butter-fingered tenderness about the use of "compulsion" means only that the public has not yet made up its mind. The American people do not yet want arbitration by courts. They have not yet thought enough or suffered enough. They are sure to suffer enough to make them think enough. When the people do want arbitration instead of war they will not hesitate in the true spirit of a virile democracy to use all the compulsion necessary to make the will and the welfare of the whole people the supreme law.

Arbitration courts are no more "compulsory" than other courts. Compulsory arbitration means only arbitration by law. Everything done by government, by law, is compulsion to the extent rendered necessary by the intractability of individuals or a minority. If we always say "compulsory arbitration" we ought also always to say "compulsory taxation" or "compulsory sanitation" or "compulsory charities." In Boston or New York or Chicago, which have established baths at the expense of the city treasury, the taxpayers wash each other's feet by "compulsion."

Compulsory arbitration adopted by the majority after public discussion among a self-governing people is voluntary arbitration. To depend on private or unenforced arbitration is to make the preservation of the public peace a matter of accident, caprice, selfishness, or the good or bad humor of individuals. There may be arbitration or there may be not; the public may get the facts on which to base its judgment or it may not; the facts it gets may be true or they may be false; the party in the wrong may heed the decisions of public opinion if there is any such decision or any way to find out what it is, or he may not heed; public opinion without organs of investigation, expression, or execution may go right or it may go wrong.

Why the chieftains on both sides should be satisfied with this state of affairs, from which either may snatch a victory out of ruin for every one, including himself, is clear enough. But there is no reason why the public should submit to it. There are three parties to every labor question, and the greatest of these is the public. Whoever is the victor in war, the

public is always the loser. It is true in labor wars, as Wellington said of the other kind of wars, that there is only one thing which can be more ruinous than a defeat and that is a victory.

Courts are poor things at best, but they average infinitely higher in justice than war, especially private war. If there was an "intolerable decision" by an arbitration court it would be an exception. It is not the habit of the judges of other courts to render intolerable decisions, though they do it once in a while. In arbitration, public or private, it has not been the usual result that decisions were awarded which were odious or impossible. It is only reasonable to judge of the probable future of arbitration by the past. A court of arbitration would be composed equally of representatives elected by capital. It would be presided over by a Judge of the Supreme Court of the United States. It would sit in the full light of publicity aided by experts with access to all books, persons, and papers. Such a court, however imperfect would grind out in the long run decisions more tolerable and more practical than are ground out now by our anarchy court—our bench of "upper dogs," the victors, the fittest who survive.

Labor troubles as it is are passing under the control of the judges, and will do so more and more. "Capitalist judges!" the working men say. Far better for the striker that the "capitalist judge" sit in such an arbitration court than in a star chamber.

What the ultimate choice of the public will finally be between the fear of "intolerable decisions" and the fact of the intolerable anarchy we now suffer is not a difficult prophecy. It is a choice of compulsions anyhow. On one side the same compulsion as now in other disputes of neighbors—to come into court if summoned and if not settlement can be made outside. On the other hand the compulsion of ruin or surrender for the capitalist, of starvation or surrender for the laborer, and on the public the vastly greater sum-total of all the compulsions put upon all its parts. Between these compulsions we need expect a civilized people, the very breath of whose life is reliance upon the processes of law instead of whim or violence, to hesitate only long enough to understand the issue.

The human employer, the reasonable, broadgauge, righteous man, is now at the mercy of the worst among his competitors. Strikes are often not really contests of employers with employees, but between employers who are cutting wages in order to cut prices, and are using their working people as troops in warring against each other. "Business is business," and the man who would like to do business so that it would also be goodwill among men must suppress such sentimentality and keep up with the pace set for him in the practical world or go out of the world. An arbitration court would protect good employers and honest business men by setting up for all their competitors a standard of wages and conditions and quality of work below which none could go. Competition would be changed from downwards to upwards.

During the recent strike in Connecticut a judge, together with an injunction against the men, issued an attachment against all their homes, furniture, their lifetime savings in the savings-banks, and all their other property to make good any damage he might later decide they had done to their employers. In Ohio a suit for $25,000 has been brought against some striking metal workers, which if decided against them will destroy their union and bankrupt every man. The House of Lords in England has just made a decision under which it will be possible to sweep into the pockets of employers, held damaged by courts, all the tens of millions of sick and old age and friendly benefit funds which have been accumulated for a generation by the English trade-unions, putting an end forever to the efforts of labor to combine against combined masters. Suits which may have this effect have been already begun.

How do the working men like this kind of compulsory arbitration?

Under the system of "arbitration" courts the liability of the working men would be limited to a fixed sum. The greatest amount collectable from a trade-union for a breach of award would be, say, $2,500, and from an individual member, if his union would or could not pay, no more than $50 could be taken.

How do the working men like the compulsory arbitration they might have?

Down the vista which stretches between the disemployment with which his present compulsion begins and the starvation with which it ends, the American working man can see trooping on to meet him his police in riot drill, with Gatling guns, hired mercenaries dressed as deputy sheriffs, the "crack" regiments of militia, judges with injunctions, and with dungeons, without trial by jury for contempt of court,—the new American lese majeste,—and Regular Army generals on manback with martial law and Idaho bull-pens.

How do the American working men like the compulsory arbitration they already have?

Under recent decisions in England (and employers' public opinion in this country apparently means to force a similar action) corporate liability is to be made practically compulsory upon labor organizations and is to be used as the last club with which capital will beat out the brains of labor. Under a system of arbitration, the right of incorporation would be made a privilege, an inducement, and a reinforcement to the organization of labor, and would be wholly voluntary.

In Ohio and New Jersey within a few months citizens have been fined large sums of money they could not pay and have been imprisoned without trial by jury because they spoke peaceably to their fellow-citizens on the public streets on such matters, of business as the price of the goods they had to sell—their own flesh and blood.

Under the system of arbitration courts, "government by injunction" would be unknown, every man would be free to discuss every aspect of his business in court or out of it, the working men would elect in their own trade-unions one-half of the judges, and all the books, papers, and witnesses needed to make clear every question would be within reach of this court of which they make an equal part.

This is the "compulsory arbitration" they might have; how do the American working men like the compulsory arbitration they have?

Judges decide questions of rent between land lord and tenant in Ireland. Judges in this country run railroads as receivers and fix prices of all kinds for laborers and shippers, for goods and supplies. Judges decide between opposing interests as to amounts of alimony, allowances in Probate Court, and awards for damages. In bankruptcy and receivership proceeding they deal with the most complicated questions of commerce and finance. They have power greater than the jury in settling the prices at which we sell our legs and arms to the railroad companies at unguarded grade crossings. Amateur judges and professional judges have shown themselves able in all kinds of arbitration proceedings to make decisions that were just and acceptable to both sides. Even if the presiding judge of the arbitration court with a casting vote were a "tool of the capitalists" the grist of this mill could not but be better than the grist of the injunction mill.

A judge cannot compel a man to work; that is true. Only a Pullman or a Spring Valley Coal Company can do that. Arbitration would have to leave and does leave workman or capitalist free to work or not, as he chooses. But it would say—and enforce it—that if he did work he must do it on the terms judicially fixed. The working man must have "the living wage," but the capitalist must have "the living profit" fixed by the court. The community that has the right to forbid or control dangerous occupations has the right to forbid or control the most dangerous of all—that of creating paupers and derelicts.

An arbitration court would not compel the parties to arbitrate any more than ordinary courts compel them to litigate. But if one wanted to litigate instead of fighting in the streets the other must defend himself, that is all. The workingmen would be liable to be called into the court by employers only if they were incorporated and registered intentionally for the purpose. At any time they could withdraw. The employers and employees could agree with each other never to go into the arbitration court; then neither would have to arbitrate. Employers could not summon employees into court in any event if these had not organized in order to make themselves subject to its jurisdiction.

The arbitration court would leave labor and capital free to make their own bargains as now. They could settle their differences in any peaceful way they chose; they could maintain private boards of arbitration or conciliation. The system would give special facilities for that. But if they would not or could not keep their troubles out of the way of the public, and if one of them would rather arbitrate than fight, the other must come into court upon being summoned.

Under arbitration courts employers or laborers could knock off at any time. They could stop for a vacation; they could stop because they had made money enough; they could stop because they had lost money enough. They could stop because they did not like each other's looks. All this "freedom of the individual" they would have. But under compulsory arbitration organized society, public opinions plus a law, would say to either if brought into the court by the other: "You shall not stop work temporarily, in belligerency, to settle by economic violence differences that ought to be settled in economic peace. To force the other to make an unwilling bargain you shall not dislocate the markets, interrupt industry, speed devastation into innocent homes and businesses, and probably disturb the public peace, and bring on riots, arson, and bloodshed. If you will not settle your differences by private or public arbitration we will settle them or you can go out of business, but you must stay out until you are willing to play the game according to these rules."

Almost all industry is now carried on by corporations. Only from the state can their privileges and immunities be obtained. The state can make it a condition of all such concessions—as part of the bargain—that these, its creatures, shall use its arbitration courts. In return for incorporation demand arbitration! Corporations already existing can be brought under the same regime when renewal of their privileges is asked for, or by the power reserved of modifying charters granted by the states. With compulsory arbitration thus voluntarily operating over more than half the field of modern industry it would easily make its way over the remainder.

The reef of "constitutionality" on which so many reforms have been wrecked can thus be avoided. But "unconstitutionality" can never permanently block social change. "Anything that is for human rights is constitutional," said Charles Sumner. This truth is made complete by the equally memorable utterance of Mr. Dooley, that the Constitution follows the flag and the Supreme Court follows the election returns.

"Compulsory arbitration" is no panacea. It is not a "social solution." It does not pacify the greatest war of all, the war which undergoes the labor wars, the war between the House of the Million between the rich and the poor, in which emancipation of slaves and serfs and the enfranchisement of peoples were episodes, and which may be now nearing its final crisis. But though a conservative measure, and operating only within the boundaries of a world of social injustice, it is a vast improvement on the manners for a sweeter solution of the greater question.

Arena. 17: 663. March, 1897.

Compulsory Arbitration. Frank Parsons.

Strikes are a serious injury to the public, cause enormous losses to employers and employees, and often accomplish nothing for the strikers beyond blacklisting and the loss of opportunity to earn a living. What is the remedy? Cooperation will abolish strikes, because employers, as a separate class antagonistic to labor, will disappear and the workers will become their own employers. But cooperation does not promise any immediate relief; it is growing very slowly, and cannot be relied on as a present solution. Aside from cooperation, the equitable methods of avoiding strikes are two: voluntary settlement by conciliation or mediation: and compulsory settlement in courts having jurisdiction of industrial questions under statutory regulations of labor and capital, or under the general principles of justice and equity.

Since voluntary methods do not accomplish the work, and there is no immediate prospect of their doing so, it is clear that

at present and probably for this generation the question is simply, strikes or labor courts. Let us examine the leading arguments that may be advanced on each side of the question.

1. Where mediation and conciliation fail, compulsory arbitration is demanded in the interests of peace,—industrial, political, and social peace. Violence and destruction are frequent accompaniments of strikes. Here are a few of the facts:

Massachusetts railroad strike, 1834; riots, militia called out to suppress the disturbance.

Philadelphia weavers, 1842; very disorderly.

Philadelphia brickmakers, 1843; much rioting and destruction of property.

Great railroad strike, 1877; rioting and burning, troops overpowered by mobs, twelve men killed at Baltimore and many more at Pittsburg, millions of property destroyed.

Gould railroad strike, 1886; violence and destruction.

New York street-car strike, 1889; riotous conduct, one striker shot.

Buffalo strike, 1892; riots, troops, bloodshed, entire State militia called out.

Homestead strike, 1892, riots, Pinkerton's battle, many lives lost; much property destroyed, forty non-union men poisoned at their meals.

Coal Creek Valley miners, strike, Tennessee, 1892: fighting and burning, State troops called out.

Silk workers' strike, Paterson, N. J., 1894; rioting and mob violence.

Great coal miners' strike in eleven States and one Territory, 1894; whole counties terrorized, strikers intrenched in open insurrection, much property destroyed, troops powerless to preserve order, shooting, eviction, dynamite assassination, kidnapping, torture, pitched battles, many lives lost.

Chicago strike, 1894; mobs, riots, troops, loss of life and property.

Brooklyn street-car strike, 1895; rioting and destruction.

Philadelphia street-car strike, 1895; some disturbance and destruction.

One of the objects of the federal Constitution is to "insure domestic tranquillity." Surely that object cannot be considered accomplished until law is substituted for force in the settlement of labor troubles. Even when rioting does not occur, the danger of violence that is incident to every great industrial dispute is in itself a mighty influence for evil. If the parties will not voluntarily adopt a method of settlement that does not threaten the public peace, they must be compelled to adopt it. The public good is the supreme law.

2. Justice demands that law be substituted for force as a means of deciding labor troubles, not merely for the sake of peace and safety, protection of life and property, and securing the business of the community from interruption or hindrance, but also for the sake of fairer and more reasonable settlements between the parties and the influsion of equity into all the relations of labor and capital.

Very often the claims of workmen who strike are wholly just, and few cases can be found in which their claims were not just in part at the least. Almost always there is a real grievance that ought to be redressed, yet in the majority of cases the strikers are defeated, and fail to obtain relief; not uncommonly indeed they are severely punished for venturing to ask for justice, all who were known to have been active in the strike being discharged and blacklisted, and the rest being less favorably treated than before the strike, to teach them to be quiet in future, and very likely discharged on the slightest pretext and replaced by non-union men.

The Pullman affair is a good illustration of the failure of strikes to secure justice for the workers. The demands of the men were for the most part fair and reasonable; public sympathy was with them; their cause was backed by a tremendous sympathetic strike on the railways; yet the struggle brought them no redress, nothing but loss.

At the time of the Philadelphia street-car strike in 1895, the men were working twelve to fourteen hours a day for $2, were unprotected from the weather, and were refused recognition as an organization. They struck for a ten-hour day, vesti-

bules, and recognition. Public sympathy was all on their side. Every paper in the city espoused their cause, except one, which was controlled by Traction interests. Immense meetings of citizens were held, and committees of prominent men were appointed to intercede with the companies. Yet the strike entirely failed to secure the workers anything but loss, discharge, and blacklisting.

The recent strike of conductors and motormen in Boston is another illustration of the ineffectiveness of strikes. The men were being worked over ten hours a day in violation of law, they were subject to arbitrary discharge at the whim of any petty boss, and in case of accident were laid off one, three, sometimes seven or eight days during the investigation of the matter, and were obliged to lose this time whether they proved faultless in respect to the accident or not. The demand of the men for better treatment in these respects was eminently just, and the public approved their cause, but they failed to obtain relief. The strike was not well managed, but, judging by experience in Philadelphia and in other cities, it is very improbable that the men would have secured their rights even if they had conducted the battle with all possible skill.

The terrible Coal Creek Valley strike was a revolt against the employment of convict labor in the mines. The strikers were conquered by the troops and gained no recognition of the very just demand that the practice of farming out prisoners to corporations should cease. The strike did something however toward bring the Tennessee system into disrepute.

One of the demands of the telegraphers' strike of 1883 was that women should receive the same pay as men for the same work. Another was for the abolition of Sunday work without extra pay; and another for an eight-hour day. The strike failed, and these just demands were not complied with.

The record of strikes by no means covers the field of injustice to labor; in innumerable cases the workers suffer in silence, knowing the costliness and futility of strikes. In many of these cases redress might very likely be obtained if a peaceful appeal to a court of justice were permitted.

Let sixty per cent of the workers affected by any grievance have the right to bring the matter into court on showing that reasonable effort in the direction of conciliation and voluntary arbitration has been made and has failed to afford redress. If either employers or employed do not desire to leave the decision with the court, let the workers choose one arbitrator, the employees another, and these two a third, subject to the approval of court, (which represents the interests of the community;) let the award of this board of arbitrators stand on the same footing as a judgment of the court and be enforced in the same way. Do this and make strikes unlawful, and you have gone a great way toward substituting reason for might in deciding the rights of labor and capital.

Not only the workers and the general public would be benefited, but there would be a corresponding gain to capital, which is also a heavy loser by strikes, and does at times submit to imposition and grant unjust demands rather than risk the consequence of a rupture. This is especially apt to be so where employees take advantage of the fact that their employers are under contract with third persons to perform a given service in a specified time.

In whatever way it is regarded, judgment by court is a better means of arriving at justice and equity than judgment by wager of battle. In respect to justice the decision of an impartial tribunal will have the same superiority over private settlement by conflict in the case of disputes between corporations and their employees as in case of disputes between man and man, or state and state. Heat and passion, greed and strength, are not the champions of equity. The prize ring does not concern itself with right. The battlefield is not the place to look for justice.

The federal Constitution reflects the thought and experience of the civilized world in the statement that the first object of government is "to establish justice." Surely governments instituted to establish justice should endeavor to prevent the continuance of anything so inimical to justice as the strike. And if society takes from labor what is often to-day its sole defence

against capitalistic aggression,—if society forbids the strike, as indeed it does already through the injunctions of its Federal courts whenever the combat threatens to hinder the mails or interfere with interstate commerce,—then it is surely the duty of society to give to labor another means of defence as good or better than the one that it has taken away; and the only method of doing this at the present stage of social development is to establish industrial arbitration, with the power of the law behind it to enforce whatever decisions may be rendered.

3. Economy demands the arbitrament of law in place of the arbitrament of conflict. In the railway strike of 1877 the loss to property and business inflicted by the mob at Pittsburg alone is estimated at $5,000,000, and the county of Allegheny was compelled to pay $2,787,000 of the loss sustained during the Pittsburg riots. The Chicago strike cost the railways $5,358,000, and the employees $1,700,000, a total of $7,058,000, not including the loss to the Pullman Company. The National Commission says that "beyond these amounts very great losses, widely distributed, were incidentally suffered throughout the country." The California fruit-growers, for example, lost $50,000 a day. The total loss which resulted from that one strike, in all probability exceeded $10,000,000. The telegraph strike of 1883 cost the companies $909,000, and the men $250,000. The railway strike on the "Gould system" in 1886 cost the strikers $900,000, those thrown out of employment by their action $500,000, and the railroads, $3,180,000.

For the strikes that occurred from 1881 to 1886, inclusive, the wage loss by the employees is estimated by the United States Commissioner of Labor at $51,814,000, and the employers' losses are estimated by the same authority at $30,701,000. And the trouble is not growing less as the years go by. From 1741 to 1880, inclusive, there were 1,491 strikes and lockouts, while for the six years ending December 31, 1886, the number of strikes alone was 3,902,—forty a year for the first period, and over six hundred and fifty a year for the second. Making all due allowance for fuller reporting of strikes in the later period, the contrast is still a startling one.

Surely it is cheaper as well as more just to settle by court than by strike. At present we pay for the strike first; then we pay for a commission to examine into its causes and results; let us have the inquiry first and save the expense of the strike.

4. Manhood also demands arbitration instead of war. Conflict debases both the victor and the victim. Every time deliberation is substituted for passion and force, a gain for character-development is made.

5. It will modify and limit the despotic powers, of unscrupulous corporations, and so tend to prevent oppression, ameliorate the condition of labor, and secure a better diffusion of wealth.

6. It will tend to secure the stability of our republic and the perpetuity of free institutions, by effecting greater harmony in the relations of employers and employed, and eliminating some of the injustices, antagonisms, and conflicts that cause the development of dangerous animosities between labor and capital, and feed the growth of anarchy.

7. The argument from history and the trend of civilization. The tendency of advancing civilization is all in the direction of substituting the compulsion of courts of justice for other private compulsion of individuals or groups of individuals. In primitive times the settlement of disputes of every sort was a private matter. If one man wronged another, or a disagreement arose as to rights, the parties fought out the difficulty alone, or with such help as their friends might grant. Men early found that this method did not insure justice and was inimical to the public peace, so they established courts of justice, with power to compel the arbitration of disputes, in order that their decisions might be by cool, impartial intelligence, instead of by heat and passion, strength and cunning.

We compel the arbitration of disputes between man and man, between States, between individuals and States, and we are about to establish a court of arbitration for the settlement of disputes between nation and nation, but disputes between a corporation and its employees are left to the primitive method of barbaric conflict.

Under the treaty between the United States and Great Britain, we are trying to do away with war between nation and nation by creating an International Court of Arbitration. When the chief nations of the world come into the movement, send their representatives, and stand behind its decrees, we shall have compulsory arbitration of national difficulties by means of judicial decision in a court of recognized authority, instead of compulsory arbitration by war. That is an object worthy the earnest efforts of the highest statesmanship; but is it not equally incumbent upon our statesmen to make an effort to abolish civil war between great corporations and their employees by establishing courts to arbitrate their differences?

Common sense demands the application to industrial disputes of the same principles that are applied to other disputes. If A and B get to fighting in the street they are brought before a court of justice and informed that they have subjected themselves to the penalties of the law; that as long as they remain in civilized society they will not be allowed to settle their difficulties by battle; that courts are established on purpose to do justice between them; and that if they cannot agree they may appeal to the courts, but must not resort to combat. Why should a corporation and its employees be permitted to fight out their quarrels in the streets to the disturbance of the peace, the interference with business, the destruction of life and property, and the annihilation of justice? Every reason that applies in the former case for putting decision by court in the place of decision by force, applies in the latter with redoubled force.

If A and B cannot be left to fight out their quarrels, nor Massachusetts and Rhode Island, Pennsylvania and New York, Turkey and Armenia, Great Britain and the United States,—if individuals and states and nations must submit to compulsory arbitration for the sake of peace and justice and liberty, why should a corporation and its employees be permitted to settle their quarrels by war in the heart of a giant city?

The substitution of peaceful, impartial, and intelligent justice for the turmoil, injustice and destructiveness of private conflict is one of the distinguishing marks of a high civilization.

It is time we extended the idea of the impartial administration of justice to the sphere of industrial difficulties. Compulsory arbitration of labor disputes means simply the extension of the control of law and order over a field which, up to the present time, has been left to chaos.

8. Experience in France, Belgium and New Zealand shows that compulsory arbitration of labor difficulties is a marked success in practice, a success that need not be afraid of comparison with the results of administering justice by tribunal in other relations of life usually subjected to judicial regulation in civilized communities.

In France and Belgium compulsory arbitration has been for years an assured and successful fact; and in 1894 a strong compulsory arbitration law was adopted in New Zealand, the most progressive, in many respects, of all the British colonies. In England the laws of 1824 and 1837 provided for compulsory arbitration in certain cases, but the laws were not comprehensive enough to be really useful.

The most famous examples of tribunals established by law for the compulsory arbitration of labor troubles are the French "Conseils des Prud'hommes." The parties may submit their differences to arbitration voluntarily. If they do not, then, after an attempt to reach an agreement has failed, the tribunal compels arbitration, and the award is enforced the same as the judgment of any other court of law.

Each council consists of eight members or more, elected for three years—half elected by the workmen in its jurisdiction, and half by the employers. Every question is within the compulsory jurisdiction except future rates of wages, which are only within the voluntary jurisdiction. As we shall see later, there is no valid reason why the compulsory jurisdiction may not be extended to the wage-rate; but even without it, there is a vast work left for compulsory arbitration to do. In France 88 per cent of the cases failing of conciliation are dealt with on the compulsory side of the court. In this country more than 57 per cent of the strikes involve questions that would be subject to the compulsory jurisdiction of a court like the French

Council, that is, 57 per cent of our strikes involve other questions than the wage-rate.

The French Labor Report for 1893 says that the "conseils" have an average of 41,000 cases a year. In 1893, 8,982 cases were settled and withdrawn before decision; 16,231 were conciliated; and 11,948 were dealt with under compulsory jurisdiction. The report also says that these courts are characterized by speedy adjudication and a very inexpensive procedure. The total cost, even in extreme cases, where distraining is necessary cannot exceed $8.72. The following extract from the French report just mentioned is specially worthy of note:

> The people are certainly right in attributing to the councils of experts the relative tranquillity which industry in France has enjoyed in the present century. They have prevented many strikes by assuring to workpeople a competent adjudication, speedy, and inexpensive.

9. Authority of the highest character favors compulsory arbitration. For example, Charles Francis A. Walker speaks of strikes as "the insurrection of labor," and in his "Political Economy" says: "It is a shame for us as a people that we have not yet made for ourselves a better way out of industrial disputes." The National Farmers' Congress and the New York Society for Political Education favor the movement, and labor organizations as a rule heartily endorse it. The London Chamber of Arbitration, a board of mediation, has recently recommended, as the result of its study and experience, that a compulsory jurisdiction be added to the conciliatory jurisdiction.

A number of objections more or less serious may be raised against compulsory arbitration.

1. In the first place, it may be urged that it is an infringement of liberty.

This, of course, is not conclusive, for every law on the statute book is an infringement of somebody's liberty. Compulsory education is an infringement of liberty. Legislative acts fixing rates to be charged by railways, grain elevators, water companies, telephone companies, etc., constitute infringements of liberty, yet all these things are justified by reason and

experience. The same statement is true of laws prescribing the height and the materials of buildings, laws against carrying arms, prohibiting nuisances, all sorts of regulations to secure the public health and safety. The question is not whether a measure is an infringement of liberty, but whether it is a justifiable infringement. The liberty of the individual must yield to the public good; liberty to do wrong must be curtailed in order that there may be more liberty to do right. Liberty to buy labor in competitive market, at a price and on conditions that would not be accepted but for the duress of necessity, is a liberty to buy manhood as a commodity, and is a liberty to which no one in America has a right since the proclamation of emancipation. Such a liberty is inimical to the elevation of labor and the best development of our citizenship; it is a liberty to buy slaves by the day under compulsion of their necessities, which is near akin to the liberty to buy slaves for life under compulsion of other external circumstances, a liberty that was shot to death in the great war.

The liberty of the employer to oppress the employee to be diminished in order that the liberty of the employee to secure justice and work under fair conditions may be increased. The latter liberty cannot be increased without diminishing the former liberty, and the latter liberty is the more worthy. It is a question of the diffusion of liberty. Shall the employer have more than his share, all that his power and advantage can secure? That is a principle which would justify murder and arson, and the abolition of all laws against crime or tortious conduct. Or shall the liberties of the case be equitably distributed, and subject to judicial determination, so that each party may have his fair share, and no more? That is the principle on which is based the law and equity of the civilized world, and it is a principle that justifies the compulsory arbitration of labor disputes.

Strikes involve a far greater interference with freedom than the proposed substitute. Strikes infringe the liberties of employers, employees, and the public; and the infringement is guided by force and passion instead of reason, wherefore it is

much more apt to be an unjust infringement than compulsory arbitration is likely to be. The infringement of liberty by compulsory arbitration is less in quantity than in the case of strikes, and infinitely superior in quality, being a curtailment merely of freedom which is bad, and to which no one has a right,—freedom to be unjust, freedom to conquer a weak adversary, freedom to endanger the public peace and safety.

The objection to compulsory arbitration on the ground that it infringes liberty is largely due to the name. If we called the ordinary administration of justice, "compulsory arbitration of contracts, damages, and obligations in general," it would sound just as antagonistic to liberty. If we belonged to a colony about to establish courts of justice in place of the private settlement of disputes between man and man, we should be met by the same objection, that it would curtail our liberty,—the liberty of the strong to oppress the weak. If we call this measure for the compulsory arbitration of labor difficulties by its true name,—the administration of justice in labor disputes,—we remove at once the chief foundation of this objection.

How completely the objections to compulsory arbitration arise from an indiscriminate dislike of any new measure, that bears its compelling character in its title, may be seen in the fact that no one questions the advantages of arbitration; it is only about compulsion that we differ. If the parties to a dispute will voluntarily submit their difference to arbitration, and live up to the award, everyone agrees that this is the best possible method of dealing with the difficulty. But when the parties refuse to do this, as is usually the case, and insist on settling their disagreements by means of strikes, boycotts, and other sorts of industrial combat, which frequently involve enormous cost, obstruction of business, suspension of industry, disturbance of the peace, destruction of life and property, serious injustice to workingmen, widespread discontent, sullen return to labor under conditions and contracts forced upon them by want, and the antagonisms and debasements of character that come from conflict,—then the question arises whether

it is not best to require the parties to submit their differences to an impartial tribunal, instead of fighting them out on the street; whether, when conciliation fails, it is not better that the difficulty should be settled according to principles of equity, by compulsion acting through a court of justice upon both parties equally, rather than according to principles of greed and passion, and by compulsion of one party by the other. Where conciliation fails, compulsion of one kind or the other must decide the contest. We have to choose between compulsion of the weaker party by the stronger, and a compulsion found to be in the wrong, after a careful hearing and impartial deliberation by a disinterested tribunal. We believe the latter best for reasons already given.

2. But we are told that it is impracticable to fix wages for the future, and that it would be unjust, because the award can be enforced only against the employer; the employees may leave if the wages do not suit them.

Well, even if we leave the wage-rate out of court, there is still a great deal for compulsory arbitration to do, as we have already seen. But in truth there is no need to leave it out. So far is it from impracticable, that the fact is, wages are continually fixed for the future. The bulk of our business is based on such settlements. If a sliding scale is adopted, wages may safely be fixed for considerable periods in advance, and are so fixed to-day. The only question is, whether this shall be done by force or by the judgment of court. Which is the more likely to err? Which is the more likely to be lived up to? The employees are not bound to continue at the wages fixed by a strike or by voluntary arbitration. In practice, it will probably be found that they will be satisfied with the wage-rate fixed by the court of arbitration. It may not be all they asked for, but it will in most cases be likely to be an improvement on what they could get without arbitration, or, problematically, by a disastrous strike.

The possible want of mutuality is not a serious matter. There is certainly no more lack of it than in the case of fixing

hours or charges. The question is at best theoretic rather than practical. There is no difficulty in getting men at the wages offered by the companies, and there will not be any difficulty in getting them at the wages fixed by a court or commission, so that the lack of power to compel men to work at the wages fixed does not practically detract from the reciprocal character of the award, to say nothing of other considerations. Even were the reciprocal element entirely lacking, it would not exclude the measure. This element is lacking in many contracts sustained by the law, those, namely, which constitute a title of contract law called "unilateral contracts."

In any case, if they do not stay, it is clear the wages are too low, and the employer must raise them if he wishes to keep his men. The court merely fixes the limit below which the employer must not go. He may pay more, must pay more if his workmen find they can do better elsewhere. There is no substantial lack of mutuality. The employer is not compelled to continue doing business, and the employee is not compelled to continue working.

If the employer cannot make the business pay at the wages demanded, because of low wages in his business elsewhere, or for other cause beyond his control, he should bring his books and his evidence into court and prove the fact, and the court will be careful not to put the wage-rate where it would destroy the employer's business, recommending, if need be, such general legislation as would affect the whole trade and lift wages to a proper level without injustice to individual employers.

In dealing with monopolies, such as gas and electric plants, street railways, and other quasi-public industries, this difficulty will not in most cases be apt to rise. The adjustment of wages would not be complicated by questions of competition.

No method short of cooperation can deal with the wage question in a fully satisfactory manner. Compulsory arbitration is simply the best method attainable until cooperation comes.

3. It is said that governmental fixing of rates and wages amounts to confiscation; that conciliation and mediation are

better than compulsory arbitration; that a court or commission can be empowered to examine the cause and justice of each industrial dispute at its inception, fix the responsibility, and leave public opinion to compel redress; that, whatever may be thought of the general philosophy of individual liberty, and its limitation by law, the right of free contract is a settled principle in our jurisprudence, and an employer has a right to fix the terms on which he will employ labor, without dictation from anyone; that compulsory arbitration will entail recognition of tradesunions and the right to continued employment; and that it will delay more vital reforms by alleviating to some extent the discontent of labor. To these and other objections the curious may find an answer in the American Fabian for March, 1897.

"On the whole, it appears to the writer, that a strong industrial jurisdiction will be of great advantage in preventing strikes and, in many cases, lockouts also, in bringing employers and employed together in mutual conference and equality instead of in the relation of servitude, in promoting mutual confidence and respect, and in preparing the way for a nobler industrial system than any the world has yet seen."

Independent. 54: 2681-2. November 13, 1902.

Do We Want Compulsory Arbitration? John Bates Clark.

If the people of America were to vote on the question, Shall we have compulsory arbitration? men would vote Yes or No according to the kind of compulsion they supposed the measure had in view. Not many would be in favor of forcing the employes to work on certain terms, whether they want to or not; but if the compulsion exercised were not on the court and only obliged it to act whenever a strike threatened to stop business, many would favor the measure, and still more would do so if it were sure that of their own free will the men would accept its verdict and actually work. One small but influential body of men would oppose arbitration of any kind, and in

doing so would betray the fact that they have an interest to subserve that is antagonistic to the interest of the public. If we can get a system under which there can be no resort to the plea, "Nothing to arbitrate," a system under which both employers and employed must allow the court to act, and in all probability will accept the result of its action, then opposition to it makes it nearly certain that an opponent has some sinister motive for his course. He hopes to gain something that a fair tribunal would not give him, and is willing to see industry interrupted and the public injured in order to gain it. What he wants is clearly something that the public does not want, and his opposition to the measure furnished an additional reason why right-minded persons should favor it. The honest objection is based on the theory that the court would act ill, and the whole question, therefore, whether we ought or ought not to have arbitration with the authority of the State behind it depends on whether we can establish courts which will act justly and, without using any new or abnormal power of coercion, will actually preserve the peace and prevent disastrous interruption of production.

We can decide whether a court can do what we want of it by noticing in detail what that is. The argument in favor of arbitration is two-fold; for the institution is called for to remedy an economic evil on the one hand and a civil and legal one on the other. On the economic side the fact is that strikers are doing untold damage and throwing on the public a greater and greater proportion of the costs which they entail. On the civil side the fact is that strikers claim the right to abandon their places and fight off men who are willing to take them. The public tolerates a large amount of violence before it interferes, and it actually allows a body of strikers to terrorize and coerce non-union men to an extent that, as a rule, actually prevents them from taking the vacated places. Something that is equivalent to anarchy is permitted by officials without drawing out a decided protest on the part of the people.

Now if there is any reason for this beyond the timidity of the officials themselves it is that the public does not wish to have strikers immediately thwarted by the importation of non-union men. It recognizes the fact that while the strikers will get more than is just if the non-union men are left entirely at their mercy, they may perhaps get less than is just if a strike-breaking force can easily be made up, transported to the place where the strike is pending and set working in perfect security. In the "subliminal consciousness" of the public there is the dim perception of a law of wages under which the natural and equitable rate is less than the employes can extort by unhindered violence but somewhat more than they could get if their places were immediately taken by needy men who would work for wages that would not be a fair gauge of the market value of labor.

If this is true, and if there is even a very partial justification of the attitude that the public takes towards strikers, who violate the law, the evil can be removed in only one way. Let a competent tribunal decide what rate of pay is just and at the rate of pay that is thus fixed let the workmen already in the positions have the first option of keeping them. If on fair terms they refuse to keep them, let them go where they will, but let the State see to it that they do not interfere with men who are willing to work at the just rate. Let all the force that is needed be used to insure this end.

It will be seen that the success of this plan depends on an appeal to public opinion, but it is a force that in this case will produce a very positive result. Nothing but the attitude of the people now prevents officials from enforcing the law which protects independent laborers, and if that attitude were reversed the law would certainly be enforced. The attitude of the people would almost certainly be reversed if it were clear to them that strikers had had the option of working under perfectly fair conditions and had refused to do it. That would be, besides doing other wrongs, injuring the public and calling on the public for assistance in this action. Nothing but a latent fear that men might have to work under unfair con-

ditions induces the people to let them take their case into their own hands and club off their rivals. Make it clear to everybody that a certain rate is natural and equitable, that strikers demand more and propose to get it by violence, and would the public tolerate that violence? Not unless the spirit of anarchism has taken possession of the great body of the people, and that is nearly unthinkable.

There is but little doubt that men would work if a fair rate were offered to them, while others were ready to take it in case they refused and the State stood ready to afford the needed protection. No body of workmen ever intends definitely to abandon the industry that employs them. To leave their mills, mines and shops would be a costly operation, even tho others were ready to receive them; but where the plants are for the most part merged in a great trust there are no others of a similar kind to which the men can go, and leaving their places is abandoning their occupations and learning new ones. It would involve a great loss of earning power and would be indefinitely worse for the men than staying where they are and accepting the court's verdict. Without any compulsion except what is involved in simply enforcing laws as they stand and protecting citizens in their obvious rights, a tribunal of arbitration may preserve the peace, protect the public and give the country some hope of success in the fierce commercial rivalries that are before us.

Of course no tribunal can do this unless it wins the confidence of the public by making just awards, and to do this it must have a sound basis for its decisions. It will not do to award to the men either the lowest rate that unemployed workingmen may be willing to accept or the highest rate that a strong union might by violence extort. The award should approximate the true value of labor as measured by its productive power. In most cases wages would be fixed by free contracts between employers and employed, with no resort to the courts of arbitration, and the prevailing rates would approximate the real value of the labor performed. Conciliation should do its work in helping the parties to come to an agree-

ment and so forestalling the need of arbitration. Only where conciliation should fail would a need of adjudication arise, and in all such cases the courts would find in the general market for labor standards that would guide them in the making of awards. Their action would not be arbitrary. Difficult, perhaps, but less difficult than many another thing that we shall have to do is the work of rescuing industry from a condition of war and the State from one of quasi-anarchy.

Reeves, William Pember. State Experiments in Australia and New Zealand. Vol. II. pp. 162-73.

Why Arbitration May Succeed.

It would be silly to claim that the revival of prosperity in New Zealand after 1895 was mainly due to the Arbitration Act. It is perfectly fair, however, to claim that it has saved employers from strikes and dislocation of trade, and increased the spending power of labour. It has therefore had its share in bringing about the colony's wellbeing. The law has neither broken down, become detestable, nor been in the faintest degree an obstacle to the revival of industry amongst the people amongst whom it is in constant use. That is something. English writers have, indeed, asserted that its operation has been confined to the manufactures of the colony, and that these are an insignificant portion of the New Zealand industry. In the first place, however, the manufactures and technical industries of the colony are not relatively insignificant—quite the contrary. The output of the factories and workshops of New Zealand amounts in value to some seventeen millions sterling a year. The total export trade of the colony for the year 1900, though showing a very agreeable increase, only amounted to £13,256,000. In other words, the output of the factories and workshops is above that of the exports. But the working of the Arbitration Act is not confined to the factories and workshops; it may be applied wherever labour is organized. Mining and shearing come within its scope, and several of

the most important decisions under it have related to the work of coal and gold mines. Furthermore, the Act has always applied to shipping and seamen, to the builders, painters, carpenters, and butchers. Finally, in 1900, its scope was widened to include railway men, shopmen, clerks, farm labourers, and almost all wage and salary earners.

The same writers confidently predict that it cannot continue to command obedience. They say that so soon as it is put to the strain of public passion and excitement it must break down through the refusal of either labour or capital to obey it. Or, should there be no such revolt of industry, the Act may remain in operation for some time, but at the cost of a fearful sacrifice in the shape of the strangling of industrial enterprise by State restriction. Without writing of the future of the Act in any too confident strain, let me deal in order with a few of the objections most commonly put forward against it, and upon which most of the prophecies of its failure are based.

It is urged, and sometimes by writers and speakers of real knowledge and experience of life, that a coercive Act is not only dangerous and barbarous, but is not wanted, for two reasons. The first of these is that private and unofficial conciliation and arbitration, of which we have seen so many examples in England, is not only more desirable, but is actually doing the work which the colonies entrust to state tribunals. The second reason advanced is, that if the state is to interfere at all in these conflicts, it is wiser to do so by optional laws—machinery of which the combatants may avail themselves or not as they please. It is contended that the English Conciliation Act and the Massachusetts and other Acts in the United States supply striking examples of success. In a previous chapter I have tried to sketch the universal failure of private conciliation and optional statutes. I need not go over that ground again. It is the state of things there summarised which has forced New Zealanders and Australians to believe that their choice lies between compulsion and warfare, between authority and anarchy.

The objectors to compulsion tell us that compulsion is tyrannical inasmuch as it prevents private citizens settling their own business in their own way, and obliges them to conduct it on lines laid down by a third party—the state. The reply to this is that the right of private persons to manage their own business without state interference ceases upon their conduct becoming an injustice to others or an inconvenience to the nation. The disputants in labour conflicts do more than injure one another. They do direct harm to persons engaged in allied industries, and to tradespeople and others whose interests are involved in a labour war, but who have no voice therein. In the third place, they indirectly injure the whole community. There are three parties interested in every industry—(1) the masters, (2) the men, (3) the community. Of these the last always desires arbitration in labour disputes. When, therefore, one of the other two also wishes it, the case for insisting upon it becomes very strong.

Next, we are told that a compulsory Act is impotent because it cannot force an employer to carry on a business if he refuses to do so, except on his own terms. Nor can it oblige a thousand men to work, if they refuse to do so. Certainly not. But how many employers will give up business rather than accept an honest award upon some dispute, or some detail of a dispute? Employers are not given to ruining themselves merely because they may not like the decision of an impartial tribunal. An employer who has the choice between accepting a legal decision arrived at after painstaking inquiry, and being taken into Court and fined, will almost always accept the decision. In a very few cases he may run the risk of being fined once, but he will not lay himself open to a second penalty. That is the New Zealand experience.

"How can the Act prevent industrial war when the award of the Court is intolerable to one side or the other?" asked the Times in January 1899. To begin with, Why assume that the awards of a competent tribunal will be "intolerable" to one side or the other? It is likely enough—nay, certain—that all awards may be disagreeable to somebody. But "intolerable" is a word

which presupposes that awards are likely to be made which will involve one side or the other in ruin or drive it to desperation. When its friends were endeavouring to get the New Zealand Act passed, the question used repeatedly to be put, and the framer's first answer was that he did not believe there was any serious reason to anticipate awards of that nature. He asked the Act's opponents to assume that the arbitration tribunal would not be composed of arbitrary fools, but of experienced men anxious to find a reasonable modus vivendi. He believed that if the awards erred at all it would be on the side of a laudable desire not to drive either side to extremities. The years of practical working have amply confirmed this belief. Study the complaints of the Act's opponents, and it will be seen that about the worst they can allege is that the New Zealand awards show too great a tendency to split the difference. Similar complaints are made against most other kinds of arbitration in other countries. It is true that industrial belligerents in this or that country frequently declare this or that award of a voluntary arbitrator "intolerable," and are ready to fight rather than accept it. When, however, a refusal to do so involves them in a conflict with the laws of the land, exposes them to pains and penalties, and brings public condemnation on their heads, belligerents are not nearly so ready to fancy that anything they do not like is "intolerable." They discover reasons why it is better to grin and bear it.

On the other hand, it has been flatly declared that the Court cannot coerce trade unions. Vivid pictures have been painted of the tragic absurdity of endeavouring to collect fines from trade unionists by distraining on the goods of poor workmen whose union is without funds, and who are themselves penniless. The answer to that is, that poverty-stricken unions, composed of penniless workers, are only too thankful to accept the decision of a state tribunal.

They cannot strike against a powerful employer; much less can they hope to starve out a court of arbitration. Its decision may not altogether please them, but it is all they are likely to get. The Arbitration Court, therefore is as potent to

deal with trade unions as with employers. Wealthy unions it can fine. Penniless unions are helpless to fight it. Finally, at its back is the mighty force of public opinion, which is sick of labour wars and determined that the experiment of judicial adjustment shall have a full and fair trial.

In countries like England and the United States there is an object in a strike or lock-out. It is a suspension of labour or business, made in belief that it is but temporary, and that it will starve the opposing side into submission. But there is no object in a strike or lock-out in New Zealand, because you cannot starve the Arbitration Court into submission. If an employer were to shut up his factory there rather than obey the Court, he would have to retire from business altogether. If men left off labour they would have to change their occupation, because they could only resume it under the conditions laid down by the Court. Moreover, public opinion would utterly condemn them.

Most persons who conceive of a Court of Arbitration intervening in a labour quarrel, imagine the occurrence as taking place after the trouble has grown acute—after, indeed, the men have either been called or locked out. But the strength of the system is that it anticipates the acute stage. Points in dispute are settled from time to time as they arise. Instead of a union striking, its secretary files a statement of claim in the nearest conciliation office. Thus the passions of both sides are not inflamed or aroused before intervention begins. The moral, in short, of the Act is the very simple adage that prevention is better than cure.

It may be taken for granted, then, that an employer will neither pay a succession of fines with costs nor ruin himself wantonly. As for the men, the Court can fine their union and fine each of them. All the trade unions have gradually registered under the Act, and, by so doing, bound themselves in honour to respect it. No competent observer fears a grand labour revolt against the law. It may be said at once that the success of such a law depends upon its deliberate acceptance by public good sense; that to attempt to force such a statute

upon an unwilling people would be foredoomed to disaster; and that no compulsory arbitration law could work for a month in a democratic and civilised community unless opinion there had deliberately declared for a thorough trial of it in labour disputes. It will be urged, doubtless, that until some body of men has doggedly, or perhaps violently, refused to obey a compulsory award and been forced to the knees by legal process, the strength of the Act will not have been thoroughly tested. Might it not, however, be urged that the true strength of the Act is being shown by the absence of such incident? Does not the growth of a habit of peaceful acceptance of decisions hold out the best hope of ultimate success for the system?

It is argued, again, that the Act is capricious and arbitrary, inasmuch as there can be no economic or scientific basis for the awards of the arbitrators. Those who argue thus give away the whole case for those systems of private, voluntary conciliation and optional state arbitration which they as a rule ardently support. The umpire in voluntary references can have no basis for his award which the umpire in compulsory reference does not have. If the absence of an exact basis is fatal to the one it must be conclusive against the other. But need it be fatal? The business of a labour arbitrator is not to please orthodox professors of economy, but to find a reasonable modus vivendi for two disputants who are unable to find it for themselves. The odds are heavily in favor of the successful discovery of fair working conditions by any impartial, intelligent, and honourable referee. It is, at least, far likelier that he will find them than that a mere trial of strength between two angry sides will do so. Do labour conflicts supply a scientific basis?

It is, however, urged that the state tribunals may not be honourable or intelligent, and that unless they are, their awards may be ruinous and intolerable. The reply is, Why assume what is not yet the case and need never be the case? Every law depends for its success upon its administrators. The colonial Arbitration Acts are carefully framed to ensure courts having the best help from expert knowledge and skill. Should,

indeed, these courts become dishonourable and corrupt, the Acts will surely fail. But they will not become so unless the whole democracy goes rotten, of which at present there is no sign.

But granting compulsion to work well in the case of highly organized industries where labour is wholly or chiefly enrolled in trade unions, does it not leave out the unorganised trades where male and female workers have been unable to combine in unions? It is just these industries where sweating is most rife. "Yet," say critics, "it is just here, where arbitration is most wanted, that it does not apply." Quite the contrary. It protects workers in sweated industries against being frightened out of combination by the dread of dismissal. They may join unions as soon as they please, and the tribunals will bear them harmless. Nor need they fear being called upon to strike in order to get concessions from their employers. When they want to have a revision of the unbearable conditions of their industry, they have but to file a statement of claim in the office of the nearest conciliation board, and they are at once in as good a position as the strongest, oldest, and richest trade union. The special advantage of such machinery to women workers should be plain. English trade union critics have seen danger in that part of the statute which makes trade unions, when registered as industrial unions, corporate bodies with the right to sue and be sued. They fear lest resolute and wealthy employers may harass these unions by costly litigation in the ordinary law courts. But when strikes and lock-outs are abolished the main reasons for such litigation cease to exist.

To an employer the chief advantage of Industrial Arbitration, with its system of periodic laws, is that, for the time, he can make his calculations on an ascertained basis. He knows where he is. The Act gives him peace. True, it is peace with conditions; but then all his local trade rivals and competitors must obey the same conditions. The fair-minded employer can no longer be undercut by the sweater; from that meanest form of competition he is secure; all employers have to be equally fair. To sum up: After six years it can truth-

fully be claimed that so far the New Zealand Act is doing more than its framer hoped, or than any one else expected. It has steered its course without accident between the Scylla of sweeping and intolerable awards and the Charybdis of technical subtlety and legal delay. It has been lucky in a friendly legislature, capable presidents of its Court, and general desire on the part of the public to give it a fair trial. I propose to deny myself the luxury of speculating on the possibility of applying its principles to older countries. It is tempting enough just now, for these days when the labour problem is not only in the air but on the earth, and when battles of capital and labour almost hold their own with the struggles of sport, and with national wars, as items of daily news. But the shoemaker should stick to his last, and this is not the place for a sermon upon the economic wants of old and great communities. I will merely say that the very nature of a compulsory act demands, as a condition precedent to it, not only that reformers in a community shall desire to see it made trial of, but that public opinion shall have been educated up to wish for it too. Either labour or capital must be ready to invoke it. Many employers in most countries may be expected to object—at any rate at the outset —to any such experiment. A few employers are prepared to consider it already, but the employer more commonly met with submits to interference when he must, and not otherwise. Compulsory arbitration, therefore, is likely to have to wait until the public catches at it as a relief, and until trade unionists are sick of industrial warfare. Nevertheless, it is a righteous principle, and some such system as those in force in New South Wales, New Zealand, and Western Australia, or as provided by the Victorian wages boards, is probably the best alternative to the industrial anarchy which England, Europe, and America still shrink from regulating. Industry cannot be regulated by statutes and inspectors alone. Something much better informed, much more elastic, with much more give-and-take about it, is required.

Let me once more emphasise that if the New South Wales and West Australian Acts succeed, and the New Zealand Act

continues to succeed, they will, as a matter of course, have far deeper and wider effects on industry than the mere substitution of arbitration for industrial war. Their success will mean state regulation. Such minute state interference seems unthinkable to many Englishmen. But there is more than one kind of state interference, and fair tribunals are, at any rate, removed from the influence of those "emotional politicians with sensational notions about property," who are painted by commercial alarmists as industrial highwaymen eager to strip the capitalist of his last shilling.

It is urged in England by those who dislike the notion of compulsory arbitration that the New Zealand Act has not been at work long enough to serve as a thorough test of the compulsory principle. This, no doubt, is an objection of weight, though every month diminishes its weight. Then there is the argument that an experiment hitherto only tried in times of prosperity can have no value as an index of what might happen in lean years. There is much in this, though scarcely as much as is fancied by those who use it as though it were the last word on the subject. Passing from objections, it is safe to say that the experiment seems on the way to prove several useful points. First, it shows that trade unionists may be persuaded by the logic of experience to prefer arbitration to conflict, and that their unions may grow and prosper in consequence. Next, that the compulsory decisions of a state tribunal may be quite as just and moderate as those of a private conciliation board, and that obedience to them need not mean ruin to an employer or cruel hardship to workpeople. Next, the working of the Act has not strangled industry or fettered enterprise; trade and business have steadily improved under it. Lastly, instead of it being found impossible to assert the Arbitration Court's authority, there is no serious difficulty in enforcing its decisions; indeed, the enforcement of awards, which is assumed by English a priori critics to be put out of the question, has, so far, been found in practise to be by no means the most troublesome part of the work of industrial arbitration.

Report of the Industrial Commission. Vol. XVII. pp. 699-700.

Opinion of the Indiana Labor Commission.

Another evil growing out of strikes is the continuing effects of the resultant estrangement. This estrangement not infrequently lingers long after the unfortunate events which produced it have grown dim with age in the mind of the public. It retards future negotiations, chills the feeling of mutual friendliness that may have existed, creates a lack of confidence, and lessens the prospects for a continuance of the friendly relations between employer and employee, the existence of which is so essential to profitable cooperation and the mutual prosperity.

The public has an interest in the peaceable settlement of industrial disputes that has not always received the consideration its importance demands. Commercial and industrial affairs are becoming more closely interwoven and interdependent day by day. By reason of this there are, in most instances, three mutually interested parties to each lockout or strike, namely, the workmen involved, the employer and the public. So long as the conflict is confined within the narrow sphere of the first and second parties in interest, the rest of the community may remain passive spectators. Some times however, the evil done is too far reaching to be contemplated with complacency. The zone of influence is largely measured by the character of the industry involved. A strike in a factory would not jeopardize the public's interest to the same extent that one would on a street-car line of a populous city or on a railway system. Strikes and lockouts involving or largely affecting freight and passenger traffic cause inconvenience and losses of the gravest consequence, and that frequently culminate in a necessity for repression by force. The instrumentality usually employed has been the constabulary or militia.

Vesting in some state agency the power to enforce arbitration when the pubic welfare is paramount to all other considerations is a crying need of the times. The mere power to act when so petitioned would not fully meet the necessities

which sometimes arise. Frequently the injuries sustained by the public are greatly more grievous than those of either contestants, or both combined for that matter. Several times this situation has existed in Indiana and disastrous consequences have followed which would have been averted if enforced arbitration had been provided for. Those with experience and observation know that often labor troubles progress with an ever-increasing intensity; both sides become deaf to reason, refuse to yield, compromise, or arbitrate in the absence of state intervention. Meantime the helpless public must drift defenselessly along, suffering from evils for which it is in no wise responsible, and from which there is no relief until the combatants are either coerced by force or have expended their ill-directed strength and by their exhaustion are forced to quit the fight. Thus upon innocent persons are entailed pecuniary losses. This fact forces us to confront the proposition: Is it not the duty of the state to reduce these disturbances to a minimum by appropriate legislation?

It will be noticed on examination that our law does not provide for enforced arbitration. It seems reasonable to conclude however, that the time is rapidly approaching, if indeed it is not already here, when this further step must be taken to complete the essential process for settling differences between capital and labor under extremely aggravated and dangerous conditions.

In the opinion of your labor commission, the law providing for arbitration should be amended in two particulars:

First, In cases where disputes arise from any cause it should be made unlawful for a lockout or strike to be resorted to without first attempting conciliation, the offense to be punishable as a misdemeanor.

Secondly, Whenever during the process of a lockout or strike, human life is jeopardized, security to property is threatened, public order is overthrown, or the law is willfully defied or violated, both parties to such lockout or strike should be required to obey a mandatory order to submit their contention to arbitration in some manner mutually agreeable.

Such laws, justly enforced, would prove in some degree repressive to domineering and avaricious employers who sometimes precipitate strikes by attempts at unreasonable exactions, or by refusal to pay living wages, and, as well, to those groups of workingmen who delegate the management of their material interest to unwise leaders, or allow themselves to be influenced by professional agitators. Such a law would largely eliminate from our industrial system, the lockout and strike, with a long train of demoralizing influences, and substitute (therefor) a means of settlement rational in method, just in its results and give security to capital, and permanency of employment to labor, as well as the better wages which this security and permanency will bring.

NEGATIVE DISCUSSION

Report of the Industrial Commission. Vol. VII. pp. 11-2.

Testimony of Carroll D. Wright.

The only country that has ever tried it [compulsory arbitration] is New Zealand, under the Reeves Act, and, so far as I have been able to understand, it is perfectly satisfactory to one side and unsatisfactory to the other, and now there is a good deal of literature published to show that compulsory arbitration has reduced the number of persons employed, and that it is damaging the output of manufacturers of New Zealand. Others claim that compulsory arbitration in New Zealand does not apply to great industrial organizations, such as are to be found in this country and Great Britain. I have very decided opinions on compulsory arbitration.

Without discussing the incongruity of the term—you might as well speak of voluntary coercion as compulsory arbitration—the first economic result of compulsory arbitration would be to compel the manufacturer, for instance, to pay a certain wage under penalties of law, which is a very direct attempt to establish wages by law, and hence prices; and any compulsory arbitration law ought to provide that if the prices are not paid, such as would be necessitated by the lawful wage, the purchaser should be held responsible in some way. And, on the other hand, it would compel the employee to work for a wage which he did not wish to, and hold him responsible under some form of penalty for not working for $1.80 or $2—$1.80 when he was getting $2, for instance—and there is no law big enough to put everybody in jail. Some would have to be left outside. Every time that any country has attempted to fix wages by law, whether in America or in Europe, there has been a very contemptible failure. The second effect of compulsory arbitration would be to compel

the employer to shut up his works, and of all employees, if they did not like the decision, to quit work and leave the country. The third would be, if the manufacturer saw fit to carry on his works under the decision of a court of compulsory arbitration, to compel him to join a trust immediately; and I think if the government ever wants to drive everybody into the trust form of carrying on business the compulsory arbitration would be perfectly satisfactory. It seems to me it would kill industry. I have no faith in it, either from a moral or economic view. I have always so expressed myself. It is a doctrine which, so far as I know, finds no approval of organized labor anywhere. I have never known of any trade unionist, or member of a labor organization of whatever character, to approve compulsory arbitration. There may have been cases. Certainly the employer would not approve it. While I believe in arbitration as a help, never as a solution of labor problems, it seems to me that compulsory arbitration would be a positive injury.

Cleveland Press. May 1, 1911.

Opinion of Charles P. Neill, Commissioner of Labor.

There has been a steady growth in the conviction that the mere resort to a test of strength embodied in a strike or a lockout was about the least satisfactory if not the most barbarous way that could be devised for adjusting a labor controversy.

The experiences of the past five years suggest that the time is ripe for a considerable extension of the principles of the federal mediation law to embrace all fields of labor; and to arrange for mediation and conciliation in all industrial disputes, or for voluntary arbitration where the former two are unsuccessful.

It is useless to close our eyes to the fact that questions will always arise upon which no agreement is possible and in which the final settlement can only come through a test of brute strength.

But while it is futile to expect the entire elimination of strikes in any immediate future, they can be so minimized as to

become the rare exception. Mediation is the method, and I believe the present trend of both labor and capital is in that direction.

Report of the Industrial Commission. Vol. IX. p. 71.

Testimony of H. R. Fuller. National Brotherhood of Railroad Employees.

While I am a firm believer in arbitration, I do not think compulsory arbitration is a safe thing for the workingmen. If arbitration was compulsory, it would only be a matter of time until courts would be made arbitrators, and their decisions would be more or less the result of corporation influence, as is now the case so many times. To make arbitration compulsory would in effect destroy the thirteenth amendment to the Constitution of the United States, which is the greatest safeguard the working people have. I think the only arbitration that should be had is that which is mutually agreed upon by both sides to the controversy.

Mitchell, John. Organized Labor. Chap. XXXVIII. pp. 337-46.

Strike Versus Compulsory Arbitration.

As long as employers were many and unions of employees were few, as long as strikes were carried on in a small way and with purely local effect the theory prevailed that a strike was a matter of importance to the contestants only. It was believed that employers were right to buy labor as cheaply as possible and employees were right to sell their labor as dearly as possible. The haggling over the price of labor might cause a temporary cessation of work, just as a merchant and his customer might spend time in haggling over the price of a coat or a spade. The best interests of the community, it was assumed, would be subserved by permitting employer and employee to fight the matter out to their own satisfaction.

With the growth of large labor unions, however, and with the increase in the resources of individual employers and groups of employers, the interest of the public in these industrial conflicts became more vital. It was soon felt that in many strikes the public suffered more acutely than either contestant. For instance, during the recent coal strike both operators and miners commanded sufficient resources to enable them to hold out almost indefinitely, while the public would have suffered irreparable injury and untold hardship, had the strike lasted but two or three months longer. A strike of a month's duration upon all the railroads centering in Chicago would not, perhaps, affect the bonds and stocks of the corporations more seriously than a complete failure of the crops, and the workmen themselves could bear the strain quite easily. Long before the month had elapsed, however, the country would be in the throes of a frightful crisis, and steps would probably be taken by the state or national government to put an end to a contest in which the interest of the public was not only as great as, but infinitely greater than that of either combatant.

The only infallible remedy against strikes and lockouts is sometimes held to be the adoption of compulsory arbitration. By this it means an obligation imposed upon employers and employees to submit their differences to an official tribunal and abide by its decisions. There are, of course, other ways of avoiding strikes, but no other method, it is held, can be considered a specific. Conciliation or an attempt to avoid strikes by conferences between two parties, with or without the intervention of a third, is frequently successful in obviating misunderstandings and preventing strikes. The same is true of voluntary arbitration, or the submission of the matter in dispute to an impartial tribunal by both parties to the controversy.

Voluntary arbitration is entirely different in its effects from compulsory arbitration. In many cases of actual industrial conflict the weaker party to a controversy is inclined to submit the matter to arbitration, while the stronger party will have nothing to do with it and says "there is nothing to arbitrate." Consequently, voluntary arbitration, while in many cases a vast im-

provement over striking, and preferable to it, is often neither more nor less than the victory of the stronger over the weaker party to the contest; that is to say, the decision is frequently given to the side that would have won, and in proportion to one that would have won, had the issue not been submitted to arbitration, but been fought to the end through a strike or lockout. Of course, there are many instances of voluntary arbitration in which a decision has been reached without reference to, and uninfluenced by, either the numerical or the financial strength of the contestants; although, generally speaking, what is called voluntary arbitration is resorted to only when one side is strong enough to compel the other to submit to it, or when public sentiment becomes so thoroughly aroused that arbitration is practically forced upon the belligerents. Compulsory arbitration, on the other hand, introduces a new element—the power of the state. It is binding upon both parties irrespective of their comparative strength, and the decision or award is not in accordance with the strength or weakness of the employees, but with the wishes and purpose of the state, which compels the arbitration. Compulsory arbitration is, therefore, apart from all other questions, largely a matter of the strength, stability, wisdom, impartiality, and honesty of the government; and the experience of honest governments with compulsory arbitration cannot be conclusively cited for countries with corrupted governments or vice versa.

In the present chapter it is proposed to describe the workings of the compulsory arbitration laws passed in 1894 in the Australian Colonies of New Zealand and subsequently adopted by New South Wales and Western Australia. The author of the New Zealand is the Honorable William Pember Reeves, Minister of Labor, and the law has been one of the most widely discussed measures ever passed by any legislature or Parliament.

The agitation in New Zealand for some form of arbitration law dates from 1890. In that year there occurred the Maritime Strike, a labor conflict which spread sympathetically from the shipping world to all forms of industry in Australasia and

practically divided the society of the continent into two hostile camps. In order to obviate experiences of this sort in the future, the New Zealand Minister of Labor made a special study of efforts to avoid strikes in England, France, Germany, and the United States, and finally came to the conclusion that neither conciliation nor voluntary arbitration would suffice, but that the only practicable remedy for this country was compulsory arbitration. Attempts to secure the passage of a compulsory arbitration law failed in 1892 and 1893, but were successful in 1894, when a bill providing for compulsory arbitration passed the colonial Parliament.

The law as passed in 1894, and as subsequently amended, applies only to those industries wherein trade unions are established, but permits a trade union to be forced in any industry by the action of any seven workmen. The law does not in any way hinder conciliation or prevent voluntary arbitration, and only after a conciliation has been exhausted is resort had to compulsory arbitration. The obligation to arbitrate, however, is final and conclusive whenever the two parties do not come to an agreement voluntarily, and a breach of the award may, in the discretion of the Arbitration Court, be visited by fine or imprisonment.

The method of procedure in New Zealand is as follows: there is in each of the seven districts into which the colony is divided a Board of Conciliation composed of from four to six men chosen by the unions and by the association of employers, together with a chairman elected by all, who is usually an outsider and casts the deciding vote. There is only one court of arbitration for the country, this court consisting of three persons appointed by the governor for three years. Of these three members one is a judge of the Supreme Court, and the others, nominees of the unions and of the employers respectively. In cases of unusual difficulty, or requiring exact and technical knowledge, two experts may be chosen, one from each side. From the Board of Conciliation an appeal always lies to the Court of Arbitration, but the action taken by the Court of Arbitration is final and without appeal. "No award or pro-

ceeding of the court," says the act, "shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any Court of Judicature on any account whatsoever."

Neither the Board of Conciliation nor the Court of Arbitration may take the initiative in any dispute between employers and employees, but each acts only when called upon by one or other of the parties. This, however, does not detract from its powers, since any single aggrieved employee may bring the matter in controversy before the Board and ultimately before the Court and secure an award. These awards, moreover, are made binding not only upon the particular employer or association of employers involved, but also upon all employers in the same district or even in the entire colony. The court thus establishes uniform rules for the whole industry for the period of one, two, or three years.

The scope of the Court of Arbitration in making such general or common rules is not limited. Since 1894 the act, which was originally intended chiefly to prevent strikes, has been extended continually in its scope and jurisdiction, until it is now used as a means of establishing minimum rates of wages, maximum number of hours, and such general conditions of labor as the relations of union to non-union men, the use of safety appliances, the prohibition of permission of Sunday work, and regulations for the health of workers. The court, according to the act as amended, is allowed to settle all disputes about industrial matters, by which are meant "all matters affecting or relating to work done or to be done by workers, or the privileges, rights and duties of employers or workers in any industry not involving questions which are or may be the subject of proceedings for an indictable offense." Besides other matters, the court has jurisdiction over wages, allowances or remuneration of workers; peace prices; hours of employment; sex, age, and qualifications of workers; modes, terms and conditions of employment; employment of children or young persons or of any other class of persons; dismissal or refusal to employ particular persons or classes of persons; preference of union over non-union men, together with all established customs or usages in an industry,

whether in the whole colony or in a particular district. The commission thus practically has power to decide all questions relating to the wage contract and practically to legislate for existing factories as well as for those to be established during the life of an award.

The law not only prevents strikes or lockouts during the time of the award, but prevents recourse to such measures when made for the purpose of escaping the jurisdiction of the court. No man may discharge his employees on the eve of their appeal to the Board of Conciliation, and a strike may not be called for a similar purpose. There is no compulsion upon any working-man to join a union, but if he does join he may leave it only upon three months' notice. One of the most interesting phases of the awards of the Court is that where the ordinary custom of the trade is not to the contrary, the employer is obliged to grant to the member of a union preference over the non-unionist in the matter of employment, provided he be equally capable.

The effect of the act upon workingmen has been to change their status and practically to compel the incorporation of trade unions. The unions are given corporate rights and responsibilities, including the right to sue and the liability to be sued, the power to buy or lease land and authority to punish defaulting officers or members. A violation may result in the visitation of a fine, which may be collected against the union or against its members individually in the same manner as against associations of employers, or individual members of such associations.

When the system was first introduced in New Zealand it was anticipated that not one case in ten would be taken from the Board of Conciliation to the Court of Arbitration, but this prediction has not been verified. On the contrary, in two-thirds of the cases an appeal has been taken from the Board to the Court. The proceedings of the Court have been conducted, as a rule, in a sensible, rapid and untechnical manner. According to the law, professional attorneys may be excluded at the wish of either party, and useless or frivolous litigation is discouraged

and may be summarily dismissed and visited with costs. Most of the costs of the Court are defrayed by the State, the theory being that it is better to encourage useless litigation than to prevent the poorer members of society from securing justice.

While the cases arising under this law were at first few, they have rapidly increased within the last four or five years. There have been, on the whole, some few hundred cases before the Court, most of which have been decided in favor of the workingmen. It must, of course, be remembered that during practically the whole of this period New Zealand has been progressing industrially and has been enjoying good times, and the success of the workingmen before the Court is to be largely attributed to this fact. A severer test of the act will be made during periods of depression, when a larger percentage of the awards of the Court may be adverse to the unions.

The Compulsory Arbitration Law of New Zealand has become increasingly popular with workingmen. At first wage earners were somewhat luke-warm in their attitude toward it, but with each year it has gained ever greater favor with them. The employing class seems to be somewhat divided. A number of them take a stand similar to that taken by employers in this country toward the trade agreement. There are many New Zealand employers who resent any retrenchment of their right to manage their own business as they see fit or to deal with their own employees as they desire. As, however, the award in any particular case is made binding upon the whole district and in some cases even upon the whole colony, the employer enjoys the same benefit as under the trade agreement, namely, that of a certainty that no other employer will undercut him or secure an advantage over him in the matter of wages. He has still another advantage similar to that given by the trade agreement, namely the certainty of no strike during the period of the award. The result has been that employers have become more and more friendly to the act, and at the present time, there appears to be no considerable class or section of the New Zealand population which is adverse or hostile. In fact, the adoption of similar acts by the Parliaments of New South Wales and West-

ern Australia have strengthened the hold of compulsory arbitration upon New Zealanders. In New Zealand and during the period of prosperity in which it has been in operation, the Compulsory Arbitration Law seems to have been successful. Enemies of the bill predicted evil as a result of its enactment. Capital, they said, would leave the country, employment become scarce, and wages fall as soon as the law became operative, but its effect has been the direct contrary. The number of men employed in New Zealand industries has increased, wages have risen, business has progressed and become more prosperous than ever, and employers have been reassured by the stability of wages and the practically total absence of strikes and lockouts. The act has had a steadying effect upon associations both of employers and employees and has promoted a peaceable solution of many difficulties outside the court room. The classes beyond the jurisdiction of the act have clamored for the intervention of the court, and both sides appear to have been, on the whole, well pleased with the honesty and efficiency of the judges and the expeditious and untechnical methods of procedure adopted. The objection usually urged that you cannot by force of law make a man pay more wages than he is willing to pay, is not valid, since the Compulsory Arbitration Law of New Zealand does not compel a man to continue in business, but merely prohibits his paying anything less than a stipulated wage if he does so continue. Equally inapplicable is the argument that you cannot by law compel a man to work against his will. The New Zealand law does not compel a man to work any more than it does an employer to continue in business, but merely states that if the man does work, or if the employer does contract for the work, it shall be at certain rates and under certain conditions.

It cannot, however, be predicted that what has apparently succeeded so well in New Zealand would, if adopted, be equally successful in the United States. It must be remembered that New Zealand is a new country with a small and practically homogeneous population and without the sharp contrasts between wealth and poverty which exist in the United States. The entire population of the colony is below 800,000, less than one-

fourth the population of the city of New York, and most of its inhabitants are engaged in agricultural and pastoral pursuits. Thus, in 1896, there were only 27,389 persons in New Zealand employed in factories, workshops, meat-preserving, and other similar establishments, whereas in the United States, there are over seven millions of persons engaged in manufacturing and mechanical pursuits.

There are still other reasons which render the example of compulsory arbitration in New Zealand, inapplicable to American institutions. In the first place, there is the separate, independent, partially sovereign government of each of our forty-five states, with interstate competition in all forms of industry. A decision favorable to labor and to the conscientious manufacturers in one state could be immediately nullified by adverse action or simply lack of any action whatsoever in another state.

The tendency of backward states is to oppose remedial industrial legislation, while in the more progressive states such legislation does not meet with the same opposition, and the present lack of uniformity in the factory and mining laws of the various states would be felt a thousandfold more acutely in the event of the adoption of compulsory arbitration. Again, the intricate and complex character of American industry, the necessity of recognizing and maintaining differentials because of the location of the various industries, and above all the diverse and the heterogeneous nature of the people composing the American republic would render compulsory arbitration, if adopted by the various states, inadvisable if not absolutely repugnant to the great mass of both the employing and working classes.

There is, moreover, a deep-seated distrust among workingmen as to the fairness and impartiality of the judiciary, and even apart from this difficulty, it would be impossible in our American states to create a court of arbitration the findings of which would not be subject to review by the higher courts. Any other proceeding would probably come under the head of acts depriving citizens of property without due process of law, and would therefore be in conflict with the state and federal constitutions.

While for the states of the American republic a general compulsory arbitration law is not practicable, there are particular instances in which compulsion might possibly prove beneficial. It would be perfectly feasible, as is done in some European cities, to compel street railway companies or other companies obtaining valuable state or municipal franchises to submit all differences with their employees to arbitration, and the failure or refusal so to arbitrate could be considered, like the failure to keep the property in running order, as a violation of the franchise and a waiver of all rights. There are certain industries, such as railroad and street railway transportation, where the power of the state might occasionally be exercised in order to secure the country from incalculable damage. In the case of railroads engaged in interstate traffic, possibly in certain circumstances, it might become necessary for the federal government, under its right to regulate commerce between states, to compel such railroads to arbitrate differences with their workmen. Many of the arguments against compulsory arbitration laws enacted by the states would not apply to a specific law of this sort with a limited scope, if passed by the federal government for certain definite, prescribed cases, but even such arbitration should be resorted to only as an extreme measure. It is probable that no action of this or a similar sort will be taken unless a crisis should arise, such as that which occurred in the coal strike in the fall of 1902. Until such a crisis comes, however, it will be better and more in accord with the spirit of American institutions to seek industrial peace wherever possible in trade agreements and not in compulsory arbitration.

Address of Samuel Gompers, President American Federation of Labor, before the Arbitration Conference, [Chicago, 1900] under the Auspices of the National Civic Federation.

There are some, who, playing upon the credulity of the uninformed, seek to divert the principle of arbitration into a coercive policy of so-called compulsory arbitration. In other words,

the creation by states, or by the nation of boards or courts, with power to hear and determine each case in dispute between the workers and their employers, to make awards and, if necessary, to invoke the power of the government to enforce the awards. Observers have for years noted that those inclined to this policy have devised many schemes to deny the workers the right to quit their employments, and the scheme of so-called compulsory arbitration is the latest design of the well-intentioned but uninformed, as well as the faddist and schemers.

Our movement seeks, and has to a certain extent secured, a diminution in the number of strikes, particularly among the best organized. In fact, the number and extent of strikes can be accurately gauged by the power, extent and financial resources of an organization in any trade or calling. The number of strikes rises with lack of or weakness in organization, and diminishes with the extent and power of the trades union movement. Through more compact and better equipped trades unions have come joint agreements and conciliations between the workmen and associated employers, and only when conciliation has failed has it been necessary to resort to arbitration, and then the only successful arbitration was arbitration voluntarily entered into, resulting in awards voluntarily obeyed.

Organized labor cannot by attempted secrecy evade the provisions of an award reached by compulsory arbitration and determine upon a strike. By reason of our large numbers every act would be an open and public act known to all, while, on the other hand, an employer, or an association of employers, could easily evade the provisions of such a law or award by the modern process of enforcing a lockout; that is, to undertake a "reorganization" of their employes.

It is submitted that the very terms, arbitration and compulsory, stand in direct opposition to each other. Arbitration implies the voluntary action of two parties of diverse interests submitting to disinterested parties the question in dispute, or likely to come in dispute.

Compulsion, by any process, and particularly by the powers of government, is repugnant to the principle as well as to the policy of arbitration. If organized labor should fail to ap-

preciate the danger involved in the proposed schemes of so-called compulsory arbitration, and consent to the enactment of a law providing for its enforcement, there would be introduced the denial of the right of the workers to strike in defense of their interests and the enforcement by the government of specific and personal service and labor. In other words, under a law based upon compulsory arbitration, if an award were made against labor, no matter how unfair or how unjust, and brought about by any means, no matter how questionable, we would be compelled to work or to suffer the stated penalty, which might be either mulcting in damages or going to jail, not one scintilla of distinction, not one jot removed from slavery.

It is strange how much men desire to compel other men to do by law. What we aim to achieve is freedom through organization.

Arbitration is only possible when voluntary. It never can be successfully carried out unless the parties to a dispute or controversy are equals, or nearly equals, in power to protect or defend themselves, or to inflict injury upon the other party. The more thoroughly the workers are organized in their local and national unions, and federated by common bond, policy and polity, the better shall we be able to avert strikes and lockouts, to secure conciliation, and, if necessary, arbitration, but it must be voluntary arbitration or there shall be no arbitration at all —voluntary in obedience to the award as well as voluntarily entered into.

It is our aim to avoid strikes, but I trust that the day will never come when the workers of our country will have so far lost their manhood and independence as to surrender their right to strike or refuse to strike. We seek to prevent strikes, but we realize that the best means by which they can be averted is to be the better prepared for them. We endeavor to prevent strikes, but there are some conditions far worse than strikes, and among them is a demoralized, degraded and debased manhood. Lest our attitude be misconstrued, we emphatically, and without ambiguity, declare our position. The right to quit work at any time, and for any reason sufficient to the workman himself, is the concrete expression of individual liberty. Lib-

erty has been defined as the right to freely move from place to place. Hence any curtailment of this right, by and through law, or by and through contract enforced by law, is, in fact, a negation of liberty and a return to serfdom.

The industrial conciliation and arbitration law of New Zealand, the law creating and governing the Indiana Labor Commission and Arbitration Board, copied from the laws of 1897 and issued by the Indiana Commissioners, and the arbitration law of Illinois, as well as an act concerning carriers engaged in interstate commerce and other employes, approved June 1, 1898, along with other information from this and European countries, show that the kernel of all this species of legislation is a desire to prevent strikes by punishing the strikers. Our existing form of society is unquestionably based upon manufacture, commerce and transportation, and anything that disturbs the industries is resented, and means are sought to prevent a recurrence and to clothe it in such a garb that public opinion will accept it and permit its execution.

Dealing with this matter more specifically, we find that the New Zealand law provides for a Board of Conciliation, with power to use their best efforts in bringing the contending parties together and in causing them to make some agreement. This failing, it goes, upon the demand of one of the contending parties, before the Industrial Court, which has the power, as any other court, to hear and determine, and the award or sentence is enforced by the State in the usual way, by fine or imprisonment, or both, *the only distinction being that the trial by jury is dispensed with and an appeal denied.* The only relieving feature about this law is that individuals cannot claim its protection. Men must voluntarily enter into a labor union or an association in order to come under its provisions. The Industrial Courts of France are, as I understand it, organized much in the same way. The bill to prevent strikes, which was introduced in the German Reichstag at the instance of the government, had the same underlying motive, and practically the same way, of attaining this purpose. In the law adopted by the Hungarian Diet—we again meet the same purpose to prevent strikes by punishing the strikers. The question of extending the master

and servant laws of Sweden to the industrial workers of that country was under discussion in the Swedish Ricksdag, and was for some time fiercely combatted by the lovers of liberty of that country, but it was finally adopted and the other day a strike on the street cars in Stockholm was suppressed by sending several of the strikers to prison for long terms.

Coming now to our own country, we find that a bill was introduced in Congress which would admit of every train being made a mail train, and which, under the Postal Laws, would have subjected the strikers in railroad transportation to imprisonment for delaying the mails. Through the efforts of the railroad brotherhoods and the American Federation of Labor the bill failed. Then followed the introduction of the Olney arbitration bill, which provided for arbitration, voluntary in submission, or in its initiatory stages, but with compulsory obedience to the award; that is, the award was to be enforced by a direct penalty for the individual violating the same. The Indiana law has the following provisions:

"An agreement to enter into arbitration under this act, shall be in writing, and shall state the issue to be submitted and decided, and shall have the effect of an agreement by the parties to abide by and perform the award."

And section 10, page 133, reads as follows:

"The clerk of the Circuit Court shall record the papers delivered to him as directed in the last preceding section, in the order book of the Circuit Court. Any person who was a party to the arbitration proceedings may present to the Circuit Court of the county in which the hearing was had, or the judge thereof, in vacation, a verified petition refering to the proceedings and the record of them in the order book and showing that said award has not been complied with, stating by whom and in what respect it has been disobeyed. And, thereupon, the court or judge thereof, in vacation, shall grant a rule against the party or parties so charged, to show cause within five days why said award has not been obeyed, which shall be served by the sheriff as other process. Upon return made to the rule, the judge, or court, if in session, shall hear and determine the questions presented, and make such order or orders direct to the

parties before him *in personam,* as shall give just effect to the award. Disobedience by any party to such proceedings of any order so made, *shall be deemed a contempt of court and may be punished accordingly.* But such punishment shall not extend to imprisonment except in case of willful and contumacious disobedience. In all proceedings under this section the award shall be regarded as presumptively binding upon the employer and all employes who were parties to the controversy submitted to arbitration, which presumption shall be overcome only by proof of dissent from the submission delivered to the arbitrators, or one of them, in writing before the commencement of the hearing."

It will be observed that this may be called voluntary arbitration, because it is voluntarily entered into. The parties agree from the very beginning that if they, for some reason sufficient to themselves, should decline to abide by and perform the award, they are willing that the judge alone, without any jury and without any limit as to time, may send them to prison until they shall consent to perform the labor which the award enjoins upon them. The thought underlying this law is that the individual man may alienate his right to liberty, and it is, therefore, destructive of the fundamental principle of the Republic of the United States. It is equally dangerous with the New Zealand law, the Hungarian statute or the proposed law of Germany, because it aims at tying the worker to the mine, the factory or the means of transportation upon which he works, in the same way in which the agricultural worker, during the feudal era, was tied to the soil. I am not singling out the Indiana law as different from all the rest or worse than the rest. I quote it simply because it is before us. Paragraph five of the Illinois law reads as follows:

"In the event of a failure to abide by the decision of said board in any case in which both employer and employes shall have joined in the application, any person or persons aggrieved thereby may file with the clerk of the Circuit Court or the County Court of the county in which the offending party resides, or in the case of an employer in the county in which the place of employment is located, a duly authenticated copy of such

decision, accompanied by a verified petition reciting the fact that such decision has not been complied with, and stating by whom and in what respect it has been disregarded. Thereupon the Circuit Court or the County Court, as the case may be, or the judge thereof, if in vacation, shall grant a rule against the party or parties so charged, to show cause within ten days why such decision has not been complied with, which shall be served by the sheriff as other process. Upon return made to the rule, the court or the judge thereof, if in vacation, shall hear and determine the questions presented, and to secure a compliance with such decision, may punish the offending party or parties for contempt, but such punishment shall in no case extend to imprisonment."

The difference between this section and the one quoted from the law of Indiana, aside from the final proviso, the value of which is doubtful, is in phraseology only; any further comment is, therefore, unnecessary.

The Manufacturers' Association of the South, meeting during the last year, decided to submit to the Legislature of each of the Southern States a law providing for term contracts, the violation of which would be punished as a felony, and that they did this with the specific purpose of preventing strikes and of inviting Northern capital. When their attention was called to the fact that they were as yet not "bothered" by labor organizations, they answered: "That's true, and that's just the reason why we decided to take steps to prevent the formation of any and to stop strikes in the most effective manner."

All these schemes are reactionary in their character. They mean simply that the employers of to-day find themselves in a somewhat similar position to the employers of England after the "black death." The King issued a proclamation at that time that any one who would refuse to continue to work for the wages usually paid in a specified year of the King's reign, would by the state be compelled to labor at such wages, regardless of any wishes that he or she might have. The English Parliament later enacted this into a statute known as the "Statute of Laborers," and re-enacted it periodically with ever-increasing pen-

alties, until Henry VIII, finding himself in need of funds, confiscated the Guild funds, and by impoverishing the organizations of labor at that time succeeded in enforcing the statute of laborers from that time on.

That law was every bit as fair upon its face as the laws of New Zealand, Indiana, Illinois or any other of those laws with which I have any acquaintance, because it provided that the judges sitting in quarter sessions should hear both sides and then determine upon a "fair wage" for the year. Readers of "Six Centuries of Work and Wages," by Thorald Rogers, professor at the University of Oxford, will know the results to the English working people. Their daily hours of labor were increased, their wages reduced, until it was necessary to enact the "poor laws," and to quarter the worker upon the occupier, because he was continually being robbed by the employer. It has been stated by others that this law reduced the stature of the British workers by about two inches, and that the poverty—the real, dire poverty—to be found in the back alleys of English cities, even to this day, is largely caused by that species of legislation.

The thirteenth amendment to the Constitution of the United States, forbidding slavery or involuntary servitude, may perhaps be quoted to show that in our country no one can be compelled to work against his or her will, and that, therefore, there is no serious danger to individual liberty in the so-called "voluntary arbitration laws."

I believe that the reason why many well-meaning, honest and conscientious men and women favor some form of compulsory arbitration arises from the fact that their attention has been called to the refusal to arbitrate on the part of some large corporations or other employers of labor. It is felt that the rest of the public are made innocent sufferers and victims, and that there ought to be some way to give to the public the facts, in order that it might be known who is actually to blame. Whenever they are asked: "Do you want to send a man or a woman to jail for quitting work?" they immediately answer, "No, no." What they seem to desire is that these corporations or employers who refuse to arbitrate shall in some way be compelled to do so. This is manifestly impossible.

Opinion of Samuel Gompers.

Under date of August 20th, 1911, Mr. Gompers writes: The American Federation of Labor has declared in favor of voluntary arbitration, and is opposed to compulsory arbitration. Arbitration is only possible when voluntary. It never can be successfully carried out unless the parties to a dispute or controversy are equals, or nearly equals, in power to protect or defend themselves, or to inflict injury upon the other party.

"Compulsory courts could not enforce their decrees" except the State would re-establish involuntary servitude; in other words, slavery. And to abolish slavery, even revolution would be justifiable. By reason of the large numbers of workmen, any action which they might take for the purpose of evading award, would practically be a public act and render them liable under such a law.

The employer on the other hand, could readily close down his plant by assigning any reason, and then re-open anew under any name, or he might close down and "re-organize" his labor force. Either method would help him evade such a law. On the other hand, if the award was enforcible against the will of the employer, it would practically be confiscation.

Then again there are other methods by which employers can evade an award, one of which was resorted to several years ago in New Zealand, where a court of arbitration decided in favor of the employees. The employer closed his plant and began ordering goods in his line from England. Whether such an employer could, at some future time, re-open his business and proceed to manufacture with other workmen upon the ground that they are not the same parties, and thus evade the award, I am not quite certain, but I have shown that there are sufficient means by which employers can evade an award.

The wage earners are earnestly striving to obtain a living wage, which, when expended in the most economical manner, shall be sufficient to maintain an average-sized family in a manner consistent with whatever the contemporary local civilization recognizes as indispensable to physical and mental health,

or as required by the rational self-respect of human beings. That living wage changes continually for what constitutes a living wage to-day may be entirely insufficient a decade hence.

It may not be amiss to say that one of the chief advocates of the compulsory arbitration law of New Zealand, who was largely instrumental in securing its enactment in that country, is Mr. Lusk who was in the United States in 1900 and left no way untried to laud the compulsory arbitration law of New Zealand, urging its adoption by the people of this country. At that time I protested against such a law being applied to our country, and stated that it may seem to act fairly well during fair times, but the law had not been put to a test through periods of industrial depression.

The same Mr. Lusk, after having spent several years in New Zealand since 1900, came to the United States a few years ago and has since publicly admitted that the compulsory arbitration law of New Zealand was not a success. As a matter of fact, it is an effort to pursue an unnatural course to meet a natural situation and condition. It would be the most unwise course for labor to pursue to advocate compulsory arbitration as a means of preventing or adjusting labor disputes. Labor wants to maintain industrial peace, but it must be with honor and justice, and it must not conflict with natural human rights.

Labor must organize and possess power and wield that power intelligently and discreetly. We want conciliation, and if necessary arbitration, but arbitration voluntarily entered into and its terms and awards voluntarily adhered to, but compulsory arbitration, never.

At the annual meeting of the Civic Federation held in New York, December 17, 1907, when the subject "Is Compulsory Arbitration Practicable?" was under discussion, Mr. Lusk was one of the speakers, and it was then that he admitted that the Compulsory Arbitration Law of New Zealand was a failure. A summary of his address was published in the National Civic Federation Review of February, 1908.

Peters, John P., ed. Labor and Capital. pp. 153-60.

Objections to Compulsory Arbitration. Carroll D. Wright.

Society is directly or indirectly interested in securing industrial peace.

The record of strikes in the United States for the twenty years ending December 31, 1900, as shown by the U. S. Department of Labor, would seem to indicate that at times, at least, some drastic measure for the prevention of conflicts might be desirable. This record is that during the period named there were 22,793 strikes, with a wage loss of $257,863,478, a loss through assistance rendered by labor organizations of $16,174,793, and a loss to employers of $122,731,121. The lockouts during the same period numbered 1005, with a wage loss to employees of $48,819,745 a loss through assistance rendered by labor organizations of $3,451,461, and a loss to employers of $19,927,983. The total losses by strikes and lockouts reached the vast sum of $468,968,581.

It is curious to note that in 50.77 per cent of the establishments in which strikes occurred they were successful, in 13.04 per cent partially successful, and in 36.19 per cent failures.

In 50.79 per cent of the establishments where lockouts were ordered success attended the efforts of the employers while in 6.28 per cent they were partially successful, and in 42.93 per cent, the lockouts failed of the object for which they were ordered.

In a large majority of all these strikes and lockouts the public as such probably experienced little or no inconvenience, and, therefore, was not sensitively interested in them, but in others, and those of the greatest magnitude, the loss cannot be computed by any statistical method. It is utterly impossible to ascertain the direct and indirect loss to the public through great strikes and lockouts which suspend traffic, raise prices, and affect all trade and commercial transactions.

It is when these great strikes with far-reaching influences are on that the suggestion comes very forcibly from various quarters that some compulsory method of preventing or set-

tling them promptly should be inaugurated. The principles of what is known as compulsory arbitration have not, however, secured very wide-spread influence in the United States and in other countries largely devoted to mechanical production; they have been adopted in New Zealand, where the industries are still small and are in their growing period of inception. The idea, nevertheless, is receiving increased attention and even approval here in this country, and it is worth while to inquire whether its adoption is desirable, and if so, under what conditions.

It should be remembered that in the last analysis every effort of the law-makng power to adjust industrial difficulties is a practical declaration on the part of society to employers and employees that if they are not able to conduct their affairs in such a way as to relieve society of annoyance, it proposes, directly or indirectly, and in some degree, to take charge of those affairs. Whenever a board of arbitration before which the parties involved can come of their own volition is established, it is in a degree an announcement of the intention of society to interfere to protect itself from the complications arising from strikes and lockouts. Hence the whole subject must be viewed very largely from the standpoint of the public's interest, for if compulsory arbitration is ever justifiable it is only when it is essential to prevent industrial warfare, that society may not suffer.

The experience of New Zealand is giving some impetus to the doctrine of compulsory arbitration, but the fact is, the experience of New Zealand cannot be taken in any sense as a measure of what should be established in the United States. The industries of New Zealand are small and, as has been stated, in their period of inception, while in the United States industry is organized on a large scale, with vast capital involved, large industrial armies employed, and the conditions of distance of transportation, of cost, and of marketing entirely at variance with the conditions existing in New Zealand. The employers of New Zealand have been quite content to accept the decrees of the court in a majority of instances where compulsory arbitration has been applied. The labor organizations, on their part, have been quite as content. This is because

of the peculiar conditions existing. But compulsory arbitration has not yet been tested in New Zealand. The test will come when one of the parties declines for economic reasons to abide by the decision of the Court of Arbitration. The experience of New Zealand, therefore, ought to have little or no weight in influencing parties in the United States to advocate the application of the principles of compulsory arbitration, the underlying feature of which, as under any compulsory method, is and must be that which underlies an action at law.

The antagonisms which nearly always arise between the parties engaged in a suit at law are sufficient at the outset to dampen the ardor of those who believe in compulsory arbitration in industrial matters. In an ordinary suit, either of tort or of contract, the aggrieved party may summon the defendant into court. The issue is clearly defined by the declaration and the answer, and the court has a specific point or a number of specific points on which to base a decision.

In an industrial contest the aggrieved party may state his demands, and the respondent reply, setting up his own view of the grievances advanced by the petitioner. The court, instead of having a clearly defined issue in the contest, must make investigations to ascertain which of the parties is in the right, and in nearly every case the result must be a compromise not fully satisfactory to either party, or else an arbitrary decree based on the demands of the complainant on the one hand or the position of the respondent on the other.

Such a course would inevitably have the same effect as ordinary suits at law—an increased irritation and a lasting antagonism—and instead of resulting in bringing employer and employee nearer together as time goes on, would drive them farther apart and make all efforts at ethical conciliation, and consideration even, more and more difficult.

The matters referred to above, however, are elementary. The chief difficulty with compulsory arbitration relates to production itself and the means by which trade is increased. For instance, the employees of a large concern, under the processes of compulsory arbitration, summon their employer into court on

a demand for an increased rate of wages. The court, after investigating the whole subject, enters a decree in favor of the petitioners. The decree of a court can be executed by the officers of the court if they are able; if not, by an increased force, even to the extent of the employment of the military arm of government. Thus the employer would be compelled either to pay the increased rate when economic conditions would not permit, or to sacrifice his business, thus throwing the petitioning employees out of work.

On the other hand, suppose the decree was in favor of the employer. It could be executed with all the force and power of the State, the same as in the other instance. Then the employees would be obliged to accept the rate of wages decided by the decree of the court or take the consequences. These consequences would be defined by the law in the shape of penalties.

One can easily see how under some conditions the results might be disastrous not only to the men themselves, but to the establishment involved. In the last analysis, for economic reasons, production would be reduced, or at least greatly retarded, and concerns would have to go out of business, or else adulterate goods, or resort to various other fraudulent practices in order to continue in business in accordance with the court's orders. The results might be still more far-reaching and necessitate not only what we now know in popular parlance as the "Trust," but the assumption by the government of productive industry itself.

Taking another view of compulsory arbitration, it would seem that it must inevitably result in the destruction of trade-unions. A union, a party to a suit in a compulsory court, must be able to sustain the penalty involved for violation of the decree, either in damages, which must be met by a money payment, or in the loss of its charter. It is this particular condition which makes nearly all labor organizations in this country, especially those represented in the American Federation of Labor, antagonistic to the inauguration of a system of compulsory arbitration. Adverse decisions, the impossibility

of obeying decrees or judgments, would mean inevitably the destruction of the unions involved, and ultimately of trade-unionism itself.

Most men now agree that some form of unionism is desirable. The great concerns involved in production, through combinations, mean necessarily the organization of labor. Ten or twenty thousand employees cannot be dealt with individually. There must be more and more collective bargaining as organization on both sides progresses. Hence the destruction of unionism as such would be a disaster to industry itself.

Turning to another side of the question, that of transportation, where interstate interests are involved, it may be conceded at once that the employees are in the nature of quasi-public servants, as the railroads themselves are quasi-public corporations. Some ingenious law may be devised that may call for a more thorough obligation on the part of the railway companies to perform their duties, and on the part of the railway employees to perform their duties—and adjustments which shall protect the public from the disastrous results of interrupted traffic.

Here may be an opportunity for the application of some of the principles of compulsory arbitration, but the matter is so delicate that it should be approached with great caution and great wisdom.

Many suggestions have been made during the past few years in the direction of making railway employees the servants of the public through Government intervention, putting them relatively in the position of enlisted men, or subjecting them to a license in such a way that a violation of their contract with the railway companies should forfeit their license. All these measures are compulsory in their essential elements; in essence they are such.

So far, however, no one has seemed to have the wisdom to provide for compulsory regulation and control of common carriers and their employees without at the same time infringing upon the rights of the individual; but if compulsory arbitration is ever desirable it is desirable only in some degree in such employments as affect the real personal convenience of the public itself.

Report of the Industrial Commission. Vol. XVII. p. 701.

Opinion of the Illinois State Board of Arbitration.

The Illinois State board of arbitration takes occasion in its report for 1899 to express somewhat fully its opinion against compulsory arbitration. It recognizes the obligation between employers and employees and the obligation of both to the general public, and believes in using the strongest influence to induce them to adjust their differences by arbitration, but it considers compulsory arbitration unconstitutional and unwise. The system, the board declares, has never been put to a practical test in any country in which the conditions, governmental and industrial, are similar to those in the United States. The chief example of compulsory arbitration is found in New Zealand, a country chiefly agricultural, in which accordingly only a small proportion of the population and property can be affected by the working of the law. In the United States where millions of men are engaged in mining, manufacturing, transportation, and other pursuits, which make the relation of employer and employee of the first importance and where competition is so keen that a variation of a few cents in the wage scale may bring disaster, the system would be ill adapted.

The Illinois board especially points out that compulsory arbitration would necessitate involuntary work on the part of the employees. If employers could be compelled to arbitrate and to abide by the decision of arbitrators, a similar compulsion would have to exist regarding employees and they might be forced to work for one employer, although they could find better opportunities for employment elsewhere. Moreover, it might easily occur that a board of arbitration should be so constituted as to be notoriously prejudiced on one side or the other, or so incompetent as to commit grave errors in judgment. The federal and state constitutions provide that no person shall be deprived of life, liberty or property without due process of law. The right to choose whom one will employ or for whom one will work is one of the chief liberties of men, which a legislative enactment cannot properly take away.

The Illinois board, on the other hand, thinks it is legitimate to enforce the decisions of arbitrators in cases where both parties have agreed to submit their controversy. In that case the parties are supposed to know something of the character of the men composing the arbitrating body and to repose in them sufficient confidence to be willing to trust to their judgment. (Report Illinois State Board of Arbitration, 1899, pp. 16-19.)

Annals of the American Academy. 36: 302-10. September, 1910.

Compulsory Arbitration in the United States.

Cornelius J. Doyle.

The first compulsory arbitration law was enacted in New Zealand in 1891, following a disastrous series of strikes which paralyzed the industries of that country. It was enacted on the theory that where the public interests are affected, neither an employer nor an employee is absolutely a free agent and that personal liberty ceases to be liberty when it interferes with the general well-being of society. In other words, The Parliament of New Zealand decided that the rights of the masses were paramount to the rights of any particular classes. When the law was passed, it was hailed by idealists as the acme of industrial legislation. The "country without strikes" became almost a household word and the eyes of other countries turned toward the antipodes to watch the results of its experiment in dealing with its industrial problem. Other countries of Australasia took up the consideration of the problem .and later compulsory arbitration laws patterned after the New Zealand law were enacted in New South Wales and in West Australia.

The success of the experiment of Australasia with its compulsory arbitration laws is open to conflicting opinions. Advocates of the law assert that the country has greatly prospered, which undoubtedly is true. The fact should not be overlooked, however, that since the passage of the laws in the countries affected, there has been a steady upward tendency in prices, and wages and strikers are uncommon on a rising market in any

country, for the reason that employers are more ready to accede to demands. The real test of arbitration laws comes on a falling market when the employer wants to reduce wages, and I have rarely known a case where organized workmen will accept a reduction in wages without a fight, no matter what law may be on the statute books.

If we look at compulsory arbitration laws as a means of preventing strikes and lockouts by absolutely declaring them illegal, we are bound to admit that the Australasian laws have been failures. They have not prevented strikes or lockouts absolutely, though they may have reduced them in number and extent. Numerous strikes have taken place in those countries since the adoption of the laws, some of which have been quite serious in effect, while the enforcement of the penalties provided in the laws has been found diffcult if not impossible.

Recent newspaper dispatches from Sydney, New South Wales, state that business is so demoralized by reason of a strike of coal miners that a bill has been passed rendering labor leaders or employers who instigate or aid a strike or lockout, liable to a year's imprisonment. Reduced to its final analysis that must be the ultimate end of any compulsory arbitration law—work on the conditions prescribed or go to jail. It is doubtful if even the drastic threat of a jail sentence will compel a workman to continue at work under conditions which he regards as intolerable and it is equally doubtful if any threatened punishment will compel an employer to operate his business unless he can see a reasonable profit in so doing. An award which increases the labor cost beyond what the industry can successfully carry is confiscatory and an employer can not accept it and remain in business. This was shown in Australasia in the case of the shoe manufacturers, who closed down their establishments and declared they would import shoes from Europe and America, rather than attempt to operate their factories and pay the wages set by the Arbitration Court.

In spite of its experiences, however, Australasia does not want to repeal its arbitration laws. The New South Wales law

was passed in 1901 for a period of seven years and in 1908 it was reenacted at the end of the experimental period. New Zealand endeavored to strengthen its original law by providing machinery for the better enforcement of awards, so it would appear that the idea of compulsory arbitration has met with favor in the eyes of a majority of the people in the land of its origin.

There is one point in consideration with the Australasian laws which we regard as rather significant. The last report for Western Australia for the year ending June 30, 1909, shows that joint trade agreements are making the place of awards of arbitration courts. These contracts are termed "Industrial Agreements" and are enforceable by the Court of Arbitration. They are entered into voluntarily by employers and employees as are joint trade agreements in this country. Mr. Edgar T. Owen, Registrar of Friendly Societies, in his report dated August 14, 1909, says: "It will be observed that the unions which have made industrial agreements in lieu of awards of the court for settlement of their disputes contain 7,524 out of a total membership of all unions of 15,596."

The point I desire to emphasize is that in West Australia, as shown by the report referred to, workingmen and employers are making their own agreements instead of having the Arbitration Court make them. The same report shows that while there were 168 disputes referred to the Arbitration Court from 1901 to 1904, there were three disputes referred to it in 1907 and twelve disputes in 1908. That does not seem to argue for the popularity of the Arbitration Court, and taken in conjunction with the increase in the number of industrial agreements, indicates clearly to my mind that employers and workingmen in West Australia are turning to the joint trade agreement as the better method of adjusting differences.

As has been stated, the New Zealand law was enacted at a time when the public was exasperated as the result of a series of prolonged strikes. It was not favored by either employers or employees. For a time neither side took advantage of the law, until a union which was worsted in a strike, decided to

register so that it might have an additional weapon in the event of another dispute. When the next dispute did arise, the employers ignored the court and an award was returned against them. The award was enforced by fines and eventually employers began to realize that the new law was not to be trifled with or ignored.

In New Zealand trade unions are made the basis for compulsory arbitration. The workmen must belong to a duly registered union before they can appeal to the court. That presents rather an anomaly, compelling workmen to organize and then depriving them of the right to exercise the function of organization by quitting work collectively if they are dissatisfied with their conditions. I have dealt at some length with the Australasian laws because a study of compulsory arbitration laws in operation is of infinitely more value than mere theorizing on how such laws might operate if tried in some other country. Let us see how such laws would apply in the United States.

In the first place, the successful operation of a law depends on the state of mind of the people in the country or locality where it operates. If there is a popular demand for a law it is easily enforceable and probably will accomplish the ends aimed at. If there is no such popular demand, or if popular sentiment is against a law, it is very apt to become a dead letter and its enforcement an impossibility. Aside from the question of whether compulsory arbitration laws would not be in violation of the Constitution of the United States, in that their enforcement would entail involuntary servitude, there is no demand for such laws in our own country. The conditions in the United States and Australasia are as different as the countries are widely separated.

In Australasia the tendency is toward state control in everything.

Individual rights are regarded as being entirely subservient to the rights of the people as a whole. In the United States the opposite is true. Here we are extremely jealous of individual rights and liberties and we resent governmental interference

with what we regard as our private affairs. It is not the question whether we are right in the position or not, it is the fact that we must reckon with.

The experience of Australasia with its compulsory arbitration laws has tended to strengthen the opposition to such laws, not only in the United States, but in Great Britain and other countries. In Great Britain the question of compulsory arbitration is placed on the agenda of the Trades Union Congress as regularly as the socalled "Socialist Resolutions" in the convention of our own American Federation of Labor, and the majority by which compulsory arbitration is voted down each year shows that the idea is losing rather than gaining ground. In Great Britain it has been advocated by a radical wing of Socialists, but in the United States even the Socialists are opposed to it.

To the average American the idea of compulsory arbitration, which under certain conditions means involuntary servitude, is decidedly repugnant to his concept of liberty. Our form of government, which vests in the separate states the right to legislate in all matters within their respective borders, would make the working of compulsory arbitration laws difficult if not impossible. The federal government might pass a law applying to a few public utility corporations, such as railroads and telegraph companies, which are engaged in interstate commerce, but could not legislate for the great mass of employers and employees. Experience shows that comparatively few of our strikes are directed against public utility corporations, therefore such laws, should they be constitutional and enforceable, would not prevent strikes except in a limited degree.

I have already referred to the importance of having public sentiment on the side of any law to make it effective, and nowhere is the truth of this more observable than in the arbitration and conciliation laws on the statute books of a large number of our states. We have in Illinois a very good law dealing with industrial disputes. To the extent that the arbitration board can compel the attendance of witnesses and the production of books in a strike which inconveniences the public, it is com-

pulsory and probably goes as far in that direction as it is advisable to go at the present time.

While the Illinois law has been the means of averting many strikes and of adjusting others, our activities under the law have been limited by reason of the fact that many times neither party to a dispute likes the idea of outside interference. The machinery is there, but in a majority of cases neither side will invoke its aid, and it is doubtful to my mind whether they could be forced to do so. They must be educated and led rather than driven.

The compulsory feature of the Illinois law is contained in the following clause:

Whenever there shall exist a strike or lockout wherein, in the opinion of a majority of said board, the general public shall appear likely to suffer injury or inconvenience with respect to food, fuel or light, or the means of communication or transportation, or in any other respect, and neither party to such strike or lockout shall consent to submit the matter or matters in controversy to the State Board of Arbitration in conformity with this act, then the said board after having made due effort to effect a settlement, thereof by conciliatory means and such effort having failed, may proceed of its own motion to make an investigation of all facts bearing upon such strike or lockout, and make public its findings, with such recommendations to the parties involved as in its judgment will contribute to a fair and equitable settlement of the differences which constitute the cause of the strike or lockout; and in the prosecution of such inquiry the board shall have the power to issue subpoenas and compel attendance and testimony of witnesses as in other cases.

The section of the law quoted has been in effect since 1901, but has not been put to a test. It is based on the theory that public opinion is the final arbiter in disputes of a public or quasi-public character, and I believe that the theory is correct. Few strikes of a character that would inconvenience the public in the meaning of the law have occurred in Illinois since 1901. In 1903 we had a strike of street car employees in Chicago that

doubtless came under the provisions of the law and the members of the board made efforts to settle the strike, but without success, as the company refused to co-operate. The board took the question of an investigation under consideration, but as the city council and other agencies were at work trying to bring about a settlement, which was the question of first importance, the investigation was not started because it might have tended to hinder a settlement and certainly could not have been completed in time to be of much use. The strike lasted about two weeks. In a coal strike in 1906 the board offered its services in a mediatory capacity, but the dispute was of such a nature that no agency would have been effective, as both sides simply agreed to fight it out and get together when they had enough of it. The strike had been anticipated for months, and there was a sufficient supply of coal on hand to insure against any inconvenience to the public. In fact, neither the coal operators nor the miners regarded the dispute as a strike or a lockout, but preferred to term it a "suspension."

While I have said that the Illinois law goes as far in the direction of compulsory investigation as may appear advisable, I believe it could be improved upon in one particular. Instead of providing for an investigation after a strike or lockout has occurred and after the public has been injured, the investigation should be after such strike or lockout has been threatened and there appears no possibility of its being averted without some outside intervention.

The aim of all state boards of conciliation and arbitration is to prevent rather than to settle strikes, and though I am convinced that compulsory arbitration is neither practicable nor advisable in the United States under existing conditions, I believe that compulsory investigation would be desirable in all disputes between public utility corporations and their employees.

It is the hasty, ill-advised strike that causes most of our troubles and at least half of them could be averted if both sides were required to submit to an impartial investigation and give full publicity as to the merits of controversy. After such investigation, the public which is discriminating in such matters

where the facts are known would soon end a strike were one to take place. It is doubtful if any corporation or labor union would have the hardihood to fly in the face of an educated, enlightened public opinion and for that reason I believe publicity is the strongest weapon that can be used for the maintenance of industrial peace.

The experience of Canada with its "Industrial Disputes Investigation Act," of 1907, has been most gratifying. Industrial conditions in Canada do not differ materially from those in the United States. The organized workers in both countries belong to the same international unions. The Canadian act has not prevented strikes in every instance. It was not expected that it would, but in the first year of its operation thirty-two disputes out of thirty-five referred under the law, were satisfactorily adjusted. The number of men involved in the controversies referred to was between 25,000 and 30,000. The actual number of boards constituted under the law during the first year of its operation was twenty. That record proves that the Canadian law is well adapted to present-day conditions. The Canadian law was enacted on the recommendation of the deputy minister of labor following a prolonged strike of coal miners which caused a coal famine throughout Saskatchewan. Briefly it prohibits any strike or lockout in any industry affecting a public utility until an investigation has been made, and allows a period of thirty days in which to make such investigation.

After the investigation has been completed by an official board created for that particular case and the result of its findings made public, the employer or the union is free to engage in a strike or lockout if desired. Of course the board does everything possible to effect an amicable settlement as well as to conduct an investigation, and its official report is in the nature of recommendations to one or the other of the parties, or to both. Generally speaking, those recommendations have been accepted without recourse to a strike. Where they have not been and a strike has been called, the same recommendations have sometimes been accepted later to settle the strike. Though the Canadian law does not in every case prevent strikes,

it furnishes an easy and sensible method of adjusting industrial disputes if either one side or the other has an honest desire to settle. If they have not there is no law, compulsory or otherwise, that will prevent strikes.

It has been my experience, however, that in a large majority of cases both sides are anxious to avert strikes, if a middle ground can be found and neither one required to force any principle. In matters pertaining to hours and wages, usually some compromise is possible; in cases where a principle is at stake it is more difficult. Even then, though it is impossible to arbitrate or compromise on a question regarded by either side as a fundamental principle, it frequently is possible by means of intelligent discussion and argument to present a situation in a very different light from that in which it may be viewed by one side or the other. For that reason the Canadian law of compulsory investigation previous to a declaration of war in industries affecting public utilities, seems to me an admirable one which possesses advantages not possessed by the compulsory arbitration laws of Australia. No edict of a court will convince either a workingman or an employer that he is wrong and the court is right. If he is open to reason and conviction an intelligent argument may convince him that his position is untenable and he will acquiesce cheerfully, where in the other case he might submit rather than go to jail, but would still be dissatisfied.

Another point that I have observed in my experience is that arbitration awards seldom are satisfactory to either side in an industrial dispute. If both sides agree to accept such award, they usually do so, but it leaves a bad taste in the mouth of one or the other. On the other hand, agreements entered into voluntarily by both sides usually prove satisfactory. Each side has had a hand in making the contract and accepts it as the best bargain obtainable under the circumstances.

If it is true that awards of voluntary arbitration boards are not usually satisfactory, it would be even more so with compulsory arbitration. If the aim be to establish the greatest amount of harmony between employer and employee, so that the num-

ber of strikes and lockouts may be reduced to a minimum, I am convinced that to make compulsory arbitration successful each disputant must have perfect confidence in the arbitration court and an abiding faith that the award will be rendered in a spirit of justice and perfect fairness. That confidence, in my opinion, cannot be inspired where there is compulsion. As we understand arbitration it is the antithesis of compulsion.

In conclusion let me say that, though we realize that in many strikes the innocent third party is made to suffer, I am convinced from a study of the facts that it is better to "bear the ills we have than to fly to others we know not of" in the shape of compulsory arbitration.

ADDITIONAL AFFIRMATIVE DISCUSSION

Brown, Joseph M., Governor's Message to the General Assembly of Georgia. June 25, 1913. pp. 24-38.

Compulsory Arbitration Necessary.

During the fall of last year there occurred a strike by the employees of the street car company in Augusta, and another strike by certain employees of the Georgia Railroad, which, for a number of days, prevented the public from having the benefit of the operation of these common carriers.

By the census of 1910, the city of Augusta had a population of 41,040 people, and the counties served by the Georgia Railroad had an aggregate of 582,182. These figures give an idea of the widespread wrong which these striking employees committed.

These two corporations were chartered by the State for the purpose of conducting commerce and the carriage of passengers. The primary object of their charters was service to the public. Consequently, when the charters were granted and these roads were built a contract was virtually entered into by the owners of these properties and the State whereby the former bound themselves to perform the duties of common carriers for the public, and the latter bound herself to protect them in the peaceable performance of those duties. Not one word was said in those charters giving the owners the right to suspend the operation of the roads to the detriment of public convenience, or giving the employees the same right. So long, therefore, as either of those companies attempts to perform the duty it assumed the State is under obligation to use extreme force, if necessary, to protect it in thus serving the public.

Furthermore, in the amended Railroad Commission law, as embodied in Sections 2663 and 2664 of the Code of Georgia, the Railroad Commission is authorized to require all common carriers and other public service companies under its supervision

"to establish and maintain such public service and facilities as may be reasonable and just." Also, "to order and compel the operation of sufficient and proper passenger service when in its judgment inefficient or insufficient service is being rendered the public or any community."

Again, it has been very aptly said by one writing on the status of the State in relationship to the common carriers:

"The power to fix rates and charges for transportation is an attribute of sovereignty, because in operating a public highway a transportation corporation exercises the power of a sovereign. This power over public highways constructed for public use to accommodate public travel and secure public convenience is a matter of public concern and is absolutely essential to government."

Hence, it necessarily follows that any person or combination of persons who obstructs, intimidates or otherwise prevents the operation of the common carriers strikes a blow at the interests of the public and puts his or their will in conflict with the mandate of the sovereign.

There is no escape, therefore, from the conclusion that those employees of the street car company in Augusta and of the Georgia Railroad put themselves in a state of open rebellion to the laws of Georgia. They ignored the cardinal tenet of republican government, viz: "There shall be equal rights to all, special privileges to none," and arrogated to themselves the exercise of special privileges for settling their quarrels with their respective managements at the expense and serious inconvenience of the public, and in a manner which embodied defiance of the law which requires all dwellers in the State having differences which they cannot peaceably adjust to submit them to the State's courts.

Again, their acts in leaving the service of the employing companies, and in virtually encouraging the formation of mobs to intimidate and personally assault those citizens whom these common carriers induced to take the places they had vacated, that the carriers might obey the law which created them, was logically a claim which can be expressed in these words: "This is your property, but it is my job on it. I and my partners, the

union, will defend our mutual rights to exclusive ownership of the positions which we hold on your property. We will determine for you whom you shall hire and whom you shall not hire, and what wages you shall pay. While it is true that we have not invested a dollar in this public service utility and you have invested millions in it, yet, we have vested rights in these positions, rights which we have acquired by usurpation, and we will hold them, while defying the laws of the State and subjecting the public to serious inconvenience and loss, even against you. On your property chartered to serve the public we are supreme over you, supreme over the public, supreme over the law. The union label carries more authority than does your Great Seal of State."

In considering the status of the public service corporations and their employees, there is one factor which can not be ignored. This is embodied in the following words found in the last annual report of the Railroad Commission of Georgia:

"In 1908, the railroads operating in Georgia employed in Georgia, 34,809 persons; in 1912, they employed 39,691.

"The wages paid these 39,691 employees in 1912 exceeded the wages paid the 34,809 employees in 1908, $5,771,104.93 more than in 1908. This, however, was to a larger number of employees. The individual wage scales show that had the number of employees for 1912 been kept the same as in 1908, they are being paid $3,668,725.21 more than in 1908.

"In other words, the 34,809 employees in 1908 received $3,668,725.21 more in 1912, which is an average increase to each railroad employee in Georgia in 1912 over 1908 of more than $105.00 per annum.

"The Commission has taken ten trunk line roads in the State, to-wit, the Southern, the Seaboard, the Atlantic Coast line, the Louisville & Nashville, the Georgia, Southern & Florida, the Georgia Railroad, the Atlanta & West Point, the Atlanta, Birmingham & Atlantic, the Central of Georgia, and the Western & Atlantic, and their wage accounts show that they paid in 1912, to the same number of employees as in 1908, in wages, $2,604,794.90 more than in 1908.

"The individual wage scale further shows that by far the

largest increase in wages have been paid to employees belonging to labor unions, such as engineers, firemen, conductors, train hands, etc."

In other words, while the average increase to each of the 34,809 employees in 1912 over 1908 was $105.00 per annum, the average increase to each member of a labor union was larger by far, in some instances, doubtless approximating $300.00 or more.

Hence, we are brought face to face with the fact that these unions, or combinations of employees, not only on public service corporations but, as is generally known, on practically all other corporations have forced their wages up above those received by workmen in all other departments of life who have not formed these aggressively militant combinations. Tens of thousands of other citizens who are not in these unions, therefore, are confronted by the fact that the unions are levying a tax upon them to the extent that they are forcing from the employers an inequitable proportion of the wages paid to the general classes in the State.

If the State not only authorizes these unions, or combinations, to exact higher wages than others receive, but also permits them by authority of law or by winking at their violations of it to hold up the general public and rob it of the facilities for transportation, then she cannot claim the right to protect any farmer or other person employing labor against his employees who might strike and proclaim to him that nobody else should work his crop for him; that if he hired any other employees they would burn his dwelling and barns, and, if needs be, kill him and his new employees to establish their supremacy over him and his property.

And if the State says to owners of railroads, factories, etc., "You shall pay tax on this property which you have created or bought, but another class shall control it. I hold you responsible for keeping it in condition for safely serving the public, but I allow them the privilege of wrecking it, or of depriving the public of the use of it," then how can she protect a farmer or any other citizen in the right to control his property?

The same courts established by the Constitution and com-

posed of judges elected by the people and jurors chosen from the people are open to the members of labor unions on the same guarantee of equality as they are to farmers and all other classes in the State, and no method of settlement of quarrels by labor unions which results in inconvenience and damage to the public should be tolerated.

Again, upon this point, it is generally understood that when the members of one of these unions strike against the employing company, the members of the same union on other companies are assessed to support the strikers until the strike is ended. If this be true the organization in question could assess its members one-tenth or one-fortieth of the amount and employ counsel to take the cause of controversy into court and could have justice secured without damaging any of the interests of the public.

Or, if the strikers are not thus supported by their brother members, they could assess themselves a sum insignificant beside the gross amount of wages lost during the period of the strike and could have their case adjudicated in the courts without inflicting damage upon the unoffending public.

In either case they would go before judges and juries of their fellow citizens in precisely the same manner as every other one is required and compelled to do; and it is impossible for all other classes to concede that the members of labor unions have any preferential privileges suggesting, if not actually applying the process of anarchy when they—the masses—are required to submit to the process of law.

The mere fact that the laborers on a public service utility or in a factory have more votes than the owners of these properties have, has no bearing on the legal status of the case. Justice is not measured by the number of votes any more than by the weight of dollars. Each party is under the law. Each is entitled to the protection of its own rights in court. Neither is entitled to interfere with the rights of the other either in court or out of court.

It should be further borne in mind in this connection that it is primarily the poor people who are subjected to inconvenience

and damage by the acts of strikers. In Augusta, for example, the rich could use their own conveyances or hire others for the purpose of coming into town and going out to their homes, but the poorer classes in some instances were compelled to walk two miles each way to reach their places of employment and to return home; whereas, had these striking employees of the street car company abstained from the unlawful acts they committed in preventing the operation of that public utility, these laborers in the humbler ranks of life could have come from and returned to their homes at trifling cost. And the poorer people at the stations on the Georgia Railroad were subjected, at many points, to great privations which the rich were able to protect themselves against.

Therefore, in such cases it is the striker, who, in his blind recklessness, puts his feet in the bread tray of the poor man and interferes with or deprives him of the right to live,—the cardinal right of humanity.

Summing up the status of a strike by employees on a public service corporation, we can not fail to know that there are more than two parties to such strikes. There is a third party, the public, which is subjected to unmerited and unnecessary inconvenience and loss. And above all, there is a fourth party, viz.: The State, whose Constitution the strikers have ignored and whose laws they have trampled under foot. Concerning this fourth, and greatest, party, I will add:

The crisis which a strike on a public service corporation brings upon the masses of the people is not only a menace to their power to procure the necessities of life, but is also a challenge to the very sovereignty of the State in that it arrogates to itself the power to prevent the railroads from performing the special functions for which the State granted their charters, viz.: Those of being common carriers of persons and property.

There is no power in Georgia greater than the power of the State herself, and that power holds mastery over and gives direction to every other power which she permits within her borders. She is supreme in potential activities, whenever she finds it needful to exert them. She exacts allegiance and will

not divide it. She ordains one process for all, and holds any rival process as rebellion. She is no respecter of persons in the enforcement of her laws.

It is needless then to say that the State would not permit the management to shut down the operation of a street car line or a railroad. It is manifest, therefore, that the acts of the employees in preventing such operation is equally indefensible, equally condemnable, and that they should be just as inflexibly held accountable to the laws of the State. No man, no combination of men, is greater than the State and her laws.

I have stressed the views herein advanced because the object lessons given by the striking employees of the street car company in Augusta and of the Georgia Railroad have been a practical service of notice by the labor union to the State of Georgia that its law within her borders is greater than her law; that the allegiance of its members to it is more binding than the allegiance they owe to her.

The Executive Office has not made this issue; the State of Georgia has not made it. The labor union has openly and recklessly thrown down the gauntlet. The State, therefore, cannot shrink from her duty to her Constitution and her people.

It is a matter of current note that the power of the labor union to hurt the general public and to terrorize public men anxious to retain offices of honor and trust has been found in the fact that in several communities it votes solidly in blocks of scores or hundreds for those who cater to it and against those who refuse to bow to its demands; but I call your attention to the fact that, besides multitudes in the cities and towns whose interests are jeopardized by its exactions, there are upwards of 200,000 voters in the rural portions of this State whose welfare can only be protected by holding the members of the labor union to the same non-interference with the rights of others and the same accountability to law which they admit as governing themselves. They will certainly claim that the labor union men, individually and collectively, are no better and have no greater rights than they.

I will add that it is no answer at all to say that labor cannot

... rights in any other way than by a strike and boycott. The ... as open to the labor union man as to the farmer, and ... not the slightest reason why the latter should be required ... his difference in the State's way, which injures no third ... that the labor union man be left free to damage every- ... while settling his difference by a strike.

... Therefore, who would remain in public life would do well ... the approval of those myriads of law-abiding and peace- ... beside whose numbers the labor union's is a trifle.

... on this subject, I will observe that the trend of the ... present day is to the suppression of combinations, ... styled trusts, organized for the restraint of trade. ... are condemned by law because they endeavor to ... business all competitors save those in their guild ... out of the people unduly high prices for products ... Yet, while it is a matter of public note that the labor ... most widespread and aggressively exacting trust in ... organs pander to it, statesmen stand in awe of it, ... seems helpless in its grasp. Why? Because it ... of thousands in almost every State in the Union. ... of allied organizations which stand as one man ... elements of society. Recent events have shown ... leaders of one of these organizations have ... a United States Court to imprisonment for ... against those who did not yield to their ex- ... members have bailed them out and re-elected ... in the organization. Such a development ... over of law. Yet it is an object lesson ... than words that the labor union holds ... than the law.

... but a small minority of the people of ... which work through strikes and ... aggressively levying a toll upon all ... citizenship. In other words, they ... and demand that all other people buy ... choose to put upon it—and that ... in like occupations receive

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and higher by far than the people have ever paid before. And contemporaneously, they are endeavoring to force from employment all similar workmen who do not join their orders. To attempt, as non-union men, to compete with them as laborers means to be treated with open contumely, attended sometimes by personal violence. To hire non-union men means for employers to be boycotted and not infrequently to suffer serious damage to their property.

Therefore, as the labor unions have combined against all other classes in their determination to defeat the equality of opportunity assured by the laws of the State, the necessity is forced upon all other classes to stand together in the refusal to concede to the unions the preferential privileges they are endeavoring to exact for themselves alone. And, as the unions have their pass-words, the pass-word of all other citizens should be: "The Law."

It is not improper here for me to declare that not all of the members of the labor unions are wilful violaters of law. A very large percentage of them love their State and would not knowingly do any one an injustice. Yet they are the victims of a system which is breeding anarchy, which has already put the State's Constitution in contempt, which has relentlessly wronged hundreds of thousands of their fellow citizens who have not offended them, which, in plain words, has applied lynch law methods to millions of dollars worth of property. I pass no harsh criticism on them, but every person who reverences the law must condemn the reckless disregard of the rights of the public which has characterized their leaders. And the State must, with unmistakable clearness, not only condemn these acts, but must force the doers of them as clearly, to know that she will not suffer such occurrences to be repeated.

It is a cardinal principle of civilization that law-abiding people shall be protected in the enjoyments of life, liberty and the pursuit of happiness. The State does not interfere with her orderly citizens in the possession of these rights, and it is the intent of her Constitution that no one within her borders shall be permitted so to interfere.

I have no more interest in this matter than has any other average citizen of Georgia; but, as her Chief Executive, whose duty to obey her laws by enforcing them is supreme over every ambition and personal interest, I have noted the recurring instances of open contempt of her Constitution, of inconvenience and damage recklessly inflicted upon multitudes of her citizens by one class, and of brutal assaults upon working men who were engaged in obeying her laws and serving the people by operating the public utilities which she had chartered and whose operation she had commanded, and I would be unworthy of the confidence with which the electorate has honored me should I fail to lay these facts before you and call upon you to enact such statutes as will force all classes and all individuals to equal allegiance to the State, and equal obedience to her laws. Upwards of two millions of people in Georgia will look with no patience upon the continuance of a condition which leaves their basic rights in life at the mercy of the star chamber of the labor union.

Under the conditions I have portrayed it has been made the duty of the State, therefore, to protect her citizens from such unlawful happenings in the future. Compulsory arbitration should be required by law, and neither the management nor the employees of a public service corporation should under any circumstances be permitted to paralyze or otherwise interfere with the powers of the public for the transportation of persons and property, or for any other service for which the corporation was chartered.

I, therefore, respectfully impress upon you the importance of enacting such laws at your present session to the end that the masses of the people shall not again suffer from the acts of any who, for their own selfish interest, would impede commerce, travel or other public need or convenience. And the same law should govern every factory wherein capital and labor come into conflict.

I also respectfully suggest that you amend Section 2664 of the Code of Georgia by requiring the Railroad Commission to promptly advise the Governor of the stoppage of performance of the duties for which it was chartered by any public service

corporation when combinations of persons unlawfully prevent its operation, thus damaging the interests of the public, and that he thereupon issue a proclamation requiring the sheriffs of all counties in which said public service corporation's working property lies to summon *posse comitatus* to protect said corporation in the performance of its chartered duties; and that, in the event the resistance to law by disorderly parties be too great for the civil authorities in any county or counties to overcome, the judge or judges, sheriff or sheriffs shall promptly notify the Governor, who shall thereupon use the militia, or such portions of it as may be needed, to enforce the State's laws which require the operation of said public service corporation or corporations for the welfare of the people.

Independent. 72: 885-7. April 25, 1912.

Has Compulsory Arbitration Failed? Edward Tregear.

Sadness will fall upon some of us here in New Zealand if we are forced to accept the doleful views exprest by some recent writers in America as to the utter failure of compulsory arbitration in a country whose chief claim to notice from students of political economy appears to be the success or failure of this one bold industrial experiment.

Has compulsory arbitration failed? I certainly will not admit such failure till the principle is assuredly acknowledged generally to be "down and out." Let me briefly summarize the accusations which, if substantiated, imply failure: (1) The Arbitration Act was intended to prohibit strikes, yet strikes have taken place. (2) The act is unjust, because you can enforce it on employers but not on workers, since the latter cannot be compelled to work, nor to pay fines, nor can they be sent to prison in any number. (3) The strong unions are withdrawing from under the act, and, altho the Arbitration Court still sits, it is only as a mockery and to "save the face" of the act's supporters.

I will try to answer these challenges, each in turn. (1) That the act was intended to prohibit strikes. I do not believe that any men in full possession of their senses would pass a law

pretending to prohibit murder if by "prohibition" is meant the absolute stoppage or cessation of murder. No law making can absolutely prevent murder; it can only punish for breach of prohibition; no law can stop men from striking or ceasing to work; it can only punish those who violate the law, and that, of course, after the law has been broken. The New Zealand Industrial Arbitration Act did not attempt the impossibility of preventing men from striking; what it tried to do was to foster conditions which would make striking unnecessary and foolish, and also cause discomfort to those who, having made an agreement not to strike, still persisted in doing so. When an industrial union registers itself under the Arbitration Act, it virtually renounces its power of striking in favor of the benefits of arbitration, and what our law attempts to punish is, not the act of striking, but the breach of the social contract.

(2) As to the unjust incidence on employer and employee, it is true that in a few cases it has been found difficult to collect fines from strikers or to imprison those who refuse to pay the fines. In by far the majority of cases, however, the fines have been collected, but it is not easy in any new country, where the population is to some extent shifting and unfixt, to pursue a wandering worker unless he is regarded as a criminal and tracked with police assistance. It may be theoretically unjust that an employer's property should prove a better mark for distraint than the chattels (if any) of a poor man, but this is a weakness found in civil cases brought under any statute; it is always easier to make a rich man pay when he loses than "the man of straw"—at all events, that is the case in New Zealand.

(3) The third indictment is partially, but only partially, true. Some of the strong unions, especially coal miners' unions, have withdrawn from under the act, so as to get liberty to strike if they will—that is, they are no longer parties to the contract of arbitration—but to say that the act is regarded as a mockery or a farce in this Dominion is a judgment that in my opinion will not bear examination.

What are the facts generally concerning compulsory arbitration? We have had it in operation about seventeen years, and

during that time have lived in what may be considered a state of industrial peace. When I say "we" I mean the great majority of citizens, the general public. The half dozen so-called "strikes" during that period would be laughed to scorn in any other country. They have been little trivial affairs, confined strictly to localities, and involving no disturbance or inconvenience to other trades, or to their branches of the same trade elsewhere. They have been settled quietly, and the main body of the strikers in every case punished, altho perhaps a few individuals have slipped thru the meshes of the legal net. What is there to put on the other side of the account against these microscopic disturbances? First, immense general prosperity, largely caused by the stability of trade conditions. The employers have benefited so greatly by the industrial equilibrium that their establishments in regard to values of land, plant, production, and the employment of workers have more than trebled since the act came into force seventeen years ago. The employers are now the supporters of the act they at first feared and reviled, and strange to say (thru the workers' ingrained belief that, under the wage system, industrialism is war), much of the workers' exprest suspicion of the act arises from the warm favor in which it is held by employers. Next, the workers must have benefited to the extent of hundreds of thousands—if not millions—of pounds by the action of awards fixing minimum wages. Let me give an example. Some ten years ago hundreds of girls were working in this city as waitresses at confectioners, tea-rooms, restaurants, etc., for wages sometimes as low as $2.50 for a week of ninety hours. An industrial union was formed by the girls, an award obtained, and there is now a minimum wage of $6.25 for a fifty-two hour week. There is thus a margin of thousands of dollars every week between the old "freedom of contract" wages and present wages. Multiply these thousands of dollars for hundreds of localities and hundreds of weeks and you will find the amount considerable for this one trade alone. Then consider similar "weak" trades (that is, where their members are easily replaced), trades in which by sex or occupation strikes are almost out of the question, and any one

can see that the act has been of immense value, even financially, to the workers; especially when, in strong unions as in weak, the prosperity of general business has induced working full time for year after year instead of the old frequently broken periods. It is true that the coal miners have withdrawn many of their unions from under the act, but their action needs further explanation than to refer their conduct wholly to the act or its shortcomings.

Lately there has been formed here an organization called "The New Zealand Federation of Labor." It declares craft unionism to be a failure, and preaches the submergence of craft unions in one great union which can, if necessary, bring about a universal strike. The miners have joined this society, and to be ready for emergencies have withdrawn their unions from under the Arbitration Act, but they have not struck, nor will they probably strike until the time is ripe. This new departure does not prove in any way the error of principle in industrial arbitration; it only shows that they believe they have found a more valuable and effective weapon with which to wage the fight. The great majority of unionists still trust in argument as being better than display of force, and this is proved by the continually augmented numbers which each year sees registered under the act, in spite of the withdrawals to join the Federation of Labor. The industrial unrest, now pervading all classes of workers everywhere, would, I believe, have had the effect of uniting the more unquiet spirits in some similar organization whether the Arbitration Act be more valuable or less valuable than it is.

Here we have tens of thousands of workers quietly engaged in their occupations month after month, apparently content with compulsory arbitration. They are not quite satisfied, for the modern "divine discontent" would prevent that under what I think (as they think) an unfair and immoral economic system by which few workers are allowed to be employed—that is, to live—unless they can make profit for others than themselves. Putting that view aside, human weakness in the administration, as well as in the observance of the act has caused friction and grumbling, but to say that the court is regarded as a farce

appears to be a totally inadequate presentment of the situation. Why should we worry ourselves about the punishment of strikers when practically we are still "a land without strikes"? Why push things to unnecessary conclusions and worry while eating your dinner as to what will happen if you eat to repletion? We shall probably have strikes, severe strikes, before long, but they will not have their place of primary origin in these islands or in the failure of the Arbitration Act. They will arise because of a great object lesson given recently in London and Liverpool as to the power of organized labor to get almost anything it chose to demand if it would only carry on the necessary functions of production or transport, and not cut off national supplies. This movement will trouble you as it will trouble us; and it will make you, who have no compulsory arbitration, feel your social edifice shake, as we, who have the principle working, will feel the tremors of the economic earthquake. Our humble buildings will be comparatively safe, but one day there will be crashings among the "skyscrapers" of the world's great cities.

ADDITIONAL NEGATIVE DISCUSSION

American Federationist. 21: 316-20. April, 1914.

Lessons for Compulsory Arbitrationists. Samuel Gompers.

New Zealand, the land without strikes! The unrest, the strikes, the industrial violence of Australasia make the name sound like purest cynicism, or else like what Professor Huxley termed a tragedy—a theory that has been exploded. Strike after strike occurs in New Zealand and the Australian Commonwealth under laws providing for both compulsory arbitration and wages boards. Experience of the workers in their efforts to abolish industrial injustice has demonstrated that this legislation is ineffective for that purpose, but is destructive of liberty and progress. 'The important element in securing results is the spirit, the resourcefulness and the initiative of the people themselves.' Nothing is a substitute for intelligent initiative. Time after time men have put their faith in theories, methods, and legislative devices. They have found all agencies impotent to secure the welfare of the people unless under the control of a people able and alert in their own interests. They have found theoretically imperfect machinery producing most gratifying results if only it permitted the development and exercise of initiative.

South Australian industrial legislation is based upon the principle that the government should take over the responsibility of securing industrial justice and peace. But the "government" has been most sensitive and responsive to the employers' interests. Employers have found the Arbitration Act a legal and effective method of weakening unions.

The Arbitration Act is nominally voluntary. An organization consisting of at least fifteen members may by a majority vote adopt a resolution to register under the provisions of the act and thus secure "governmental protection" for trade agreements.

The quality of the voluntary element appears when it is observed that organizations not registered are practically outlaw organizations whose members may be bound by any agreement brought into existence by a registered organization within their industry or district. Here lies the militant employers' opportunity to exploit the workers—for militant employers flourish even in the Australasian Utopia.

They have developed a series of "arbitration unions." Many spurious trade organizations have registered and secured contracts, which protected and enforced by governmental agencies, bind the bona fide organized workers to conditions to which they do not consent. Employers have found little difficulty in "inducing" fifteen workers to form an "arbitration union." Nor have they always troubled themselves to secure the fifteen required by law—the Australian papers state that six men organized an arbitration union for the coal miners at Huntley. The miners, following the advice of their national labor organization, did not strike, but joined the organization. Although some of the most reliable miners who had homes and families in the locality were persecuted for taking part in the affairs of the union, the bona fide unionists persisted until they got control of the organization and put the employers' agents out of office. Immediately the new officers were discharged. Thus employers work under and by means of "ideal" legislation.

So it has come about that the workers of "A Country Without Strikes" are divided into two factions—the "lawful" workers who abide by peaceful agreements even when manipulated and perverted to promote self-interest of employers, and those who are seeking a new freedom unrestricted by legalism and fines and imprisonment for quitting work. "Lawful" workers are given the support and protection of constables and militia. Legalism has created impatience if not contempt for law. It makes easy the way for radical leaders and revolutionary theories.

Another conspicuous illustration of this perversion of justice occurred in the recent strike of the waterside workers of New Zealand. A disagreement arose between the employers and the workers in the Wellington harbor over payment for time

traveling to and from work. The members of the Shipwrights' Society have long been accustomed to receiving traveling time or provision for conveyance in lieu thereof. This payment was stopped without the consent of the union and, despite numerous protests, was not restored. The Shipwrights' Society determined to affiliate to the Waterside Workers' Union in order to have the influence of that organization in pressing their demands. But the employers claimed that the waterside workers had no right to advance the claims of the shipwrights.

As is their custom, a stop-work meeting to consider the difficulty was held during a time when few ships were in the harbor. The men who attended this meeting found their places filled by other workers. A general strike of all men on the waterfront followed in which they were joined by the Auckland Waterside Workers who refused to defeat the Huntley miners by loading coal. The New Zealand Federation of Labor assumed charge of the negotiations with the Employers' Federation.

The Federation of Labor offered to submit the dispute to Sir I. S. Williams, deputy judge of Otago, for arbitration. The Employers' Federation refused to make an agreement with the waterside workers and would consider only a contract with the local union. The employers' attack was then even more openly directed toward disrupting the organization. Although the employers forced the workers to deal with the Employers' Federation, they themselves would deal only with local unions.

In the strike that followed, the courts, the agents for preserving "law and order," were used to protect and further the employers' interests; and as is the custom during industrial disputes in New Zealand, police authority was exercised with violence and sheer brutality against the strikers. Special constables were sworn in to enforce "peace," armed with revolvers and hardwood batons.

One of the most wanton attempts to intimidate the strikers was an attack on an assembly of two thousand men, women, and children who gathered on an open corner in Wellington. The attack was begun by turning upon the crowd an immense hose discharging a current of water powerful enough to sweep

a strong man off his feet and carry him down the street. While the crowd was still dazed and bewildered by the deluge the soldiers and armed specials swooped down upon them, striking and battering down all who could not escape quickly.

The crowd moved back at the command of the police. In this interval two groups of mounted specials rode down upon the people, charging and recharging, using their fire-arms. Two boys were killed and many lay on the streets wounded.

Since the government assumes the responsibility for securing industrial "peace," it punishes most vigorously all efforts at variance with "peaceful" regulations. Those who were prominent in the strike or tried to promote its purposes with sympathetic co-operation received most rigorous "lawful" treatment.

Robert Semple, an organizer for the New Zealand Federation of Labor, was arrested in Wellington on the charge of inciting persons to commit breach of the peace. He was later charged with the following seditious language:

"I have received word through from Wellington that they have used those batons on the workers there tonight, and they discovered that the workers could hit as hard as they could. But the workers got the best of it in Wellington tonight. They showed that they could club when they were clubbed, and we can do the same if they use violence. We also will club them as they club us. We do not want to do this. God forbid. Prison walls can settle no disputes for us. The only way to settle these industrial problems is by calm, cool reasoning and judgment. We will try the best we can to avoid bloodshed, and settle our difficulty without shedding one drop of blood. Bloodshed wins no argument. They might want all their reserve of strength. But I say to you we are not going to accept violence, and every worker should have something more in his possession than his naked fists, so that he can hand back as good as he gets from something more than naked fists. If it is lawful to issue 1,100 batons wherewith to attack the workers, it is equally lawful for the workers to have batons. I ask you, for the defense of your character, your manhood, and your wives and families to be ready to club them back again."

William T. Young, president of the New Zealand Federation of Labor, who was already under a sentence of three months' imprisonment for participation in the strike, was committed for trial on the charge of sedition. The editor of the official organ of the Federation of Labor was committed for trial on two charges of sedition.

These few illustrations are indicative of conditions that result from legislation which deprives the workers of the right to quit work and which makes unlawful natural, necessary activities in promoting their own welfare.

The Typographical Union wished to contribute five hundred dollars to the strikers' fund. With deference they sought from the Supreme Court an opinion upon their right to contribute what their members had donated to help their fellow-workers.

Difficulty arose in connection with outgoing ships. The crews on the boats did not wish to use their influence against the strikers. The crew of the Opawa quit work when they found that strike-breakers were unloading the cargo. They were arrested and hailed before a magistrate where they publicly stated that they would refuse to do duty if put on board the vessel. A sentence of two weeks' imprisonment was given them. Nevertheless they were put on board the vessel when it departed in the afternoon. They refused to work and when the vessel reached high sea they became guilty of mutiny on the high sea. The vessel, of course, returned to the harbor. The men were again arrested.

Fifty-four members of the Maunganui's crew refused to work. They were brought before the magistrate's court. The greater number of the men were entitled to twenty-six days' pay. The magistrate ordered that the men forfeit fourteen days' pay.

From all this it is plain that the problem of securing industrial justice has not been settled in New Zealand, but that it is an open question there as elsewhere.

Opinions expressed in a recent Australasian meeting of particular interest to those who have carefully considered the merits of the compulsory arbitration theory. In Adelaide, November

11, 1913, was held a conference of the representatives of the industrial governing bodies of the commonwealth. Seven hundred thousand workers were represented. One of the matters considered was the formation of a Federal Grand Council, consisting of representatives of the labor councils of the Commonwealth. The delegate from Western Australia, Mr. McCallum, objected to this proposal on the ground that his state would not agree to giving members of Parliament more extended powers in industrial matters.

In considering industrial legislation the right to strike was recognized as a fundamental issue. The following statements made by men who have experienced and watched compulsory arbitration are of significance.

Mr. Middleborough moved that the conference enter its protest against legislation prohibiting workers the use of the strike, and affirm its repudiation of legislation involving the imprisonment of workers participating in industrial disputes.

Mr. Curtain could not agree to take away the right to strike, neither did he want the conference to proclaim that it prohibited workers' resorting to arbitration, which had undoubtedly benefited many sections. He believed industrial war infinitely preferable to accepting any conditions offered. To carry the motion would reduce the unity of labor. He moved an amendment: "That this conference affirms that it should be competent for any union to register or not under the Arbitration Acts, and having done so, may cancel such registration as the union sees fit; and having chosen its own method of procedure, shall be entitled to the advice and assistance of all other affiliated unions and of the State and Federal Councils, regardless of the method it may adopt, but always with the compliance and approval of the State Councils."

Mr. McCallum asserted that to jail a man for striking would be to go back to slavery, and that he could not agree to that.

Mr. Middleborough moved that this conference recommend all unionists in Australia to cease work immediately if at any time the citizen defense forces are used in industrial disputes.

"It is necessary," Mr. Curtain said, "to have defense to protect

all Australians, but the military should not be used to protect some Australians against others. The soldiers provoked more trouble than they allayed, and law-breakers could and should be punished in a civil court and nowhere else."

A Royal Commission appointed by the government of New South Wales recently made its report on industrial matters. In regard to arbitration the report finds:

"It is a prime requisite of all justice that decisions be arrived at speedily and certainly, and it is difficult to believe that industrial peace can be secured by any form of industrial justice which involves intricate litigation, long delay, tedious investigation, and in many cases hope so long deferred that suitors grow sick of waiting and break through the artificial fetters which, in the interests of industrial peace, the law has placed upon their freedom of action."

The trade union organization has been found effective in producing results. It does not profess to establish an immediate millennium, but it does secure to the workers an opportunity to pursue constructive, concerted policies for their own self-betterment. Social progress must have its inception in individuals and is best attained through their normal collective action.

Compulsory arbitration has not only failed to be the panacea its advocates claimed for it, but has failed to establish any principles of industrial justice or any conditions or relations that promote that ideal. Here, as in all other desirable aims, the only hope for human betterment, industrial, social, or political, lies in the development and education of the individual so that he may understand his rights and know how to secure them. The machinery for securing these ends is not so important as the potential resourcefulness of intelligent individual initiative. Almost any kind of machinery will serve the purpose, so long as it does not hamper initiative or put any limitations upon individual freedom.

And thus the whole system of industrial compulsory arbitration is tottering of its own weight and because of the false foundation upon which it was erected.

American Federationist. 21: 731-3. September, 1914.

Compulsory Arbitration's Latest Evangelist. Samuel Gompers.

There are two methods for securing for workers wages and working conditions in accord with ideals of justice: one, to place upon the workers themselves initiative and responsibility for working out their own welfare; the other, to place initiative and responsibility in some outside agency either private or governmental. The first method is based upon democratic principles, the other upon paternalistic.

Australia and New Zealand have been experimenting with the paternalistic method for a number of years and their experiences are of more than passing interest. The recent visit to our country of one who for years has been in touch with the public affairs of the Commonwealth of Australia and who is president of the Commonwealth Arbitration Court has again brought renewed interest in that system. Judge Higgins has been a member of the court during the greater part of its existence and, as is to be expected, approves of the court and its policies. Numerous magazine articles have given prominence to his views. His is the viewpoint of one who looks at the labor movement and labor problems from the outside. He has no conception of the labor movement as a living force that the workers have created out of their necessity—a vital, normal thing that is their very own and has grown out of their lives and environment. He has a legal conception that unions must exist because the whole system of compulsory arbitration rests upon responsible unions. "Should it be necessary the Attorney-General is given authority actually to create a union," he naively stated. In the old moralities when the plot became so involved there seemed no possible way to save the characters of the drama from destruction, a god called the deus ex machinâ was let down from above to save them. Evidently unions, according to Judge Higgins, are of the nature of the deus ex machinâ—mere expedients that can be let down from above. This concept of organization explains his assurances that the wage boards and

the compulsory arbitration system in Australia are promoting rather than hindering "effective" labor organization.

From those who view the labor movement from within the ranks of the workers and who have had long and intimate experience with conditions in Australia, the opinions of two Australians have recently come to us that are of great importance.

Mr. P. H. Hickey, General Secretary-Treasurer of the United Federation of Labor of New Zealand, on June 20, 1914, wrote to us:

"Let me say that I have read from time to time of your strenuous opposition to compulsory arbitration. Believe me, if you could see the curse it is in this young country with all its ramifications and oppression and repression your antagonism would be even greater. Here it is simply crushing the heart of labor and unless the repeal of some of the legislation is not swiftly secured in the direction of giving the right to the workers to use their organizations in the direction the majority see fit, I am much afraid the result will be chaotic in the extreme."

This from New Zealand, that has been heralded as the land of no strikes that had solved the problems of industrial peace and justice! New Zealand, the "land of industrial freedom," passed a law December 11, 1913, that provides a fine of twenty pounds (one hundred dollars) or three months' imprisonment for workers found guilty of picketing!

The police of New Zealand, the "land of the workers," have most brutal methods of arresting strikers. Two arrest one man, turn him upside down, thus compelling him to walk on his hands to the police station, with his head bumping on the stones at each forward movement. It is called "Frog Marching." Strikes have not vanished from New Zealand, but they have been made criminal. Industrial peace and freedom are not yet established in that country. Rather state interference has restrained the progress of democracy in industry.

In Australia state regulation of the problems of the workers takes two forms, compulsory arbitration and wages boards. The same principle of unfreedom underlies both. The conditions of

service are determined by outside authority with power to enforce compliance.

Judge Higgins approves the principle underlying wages boards legislation, but finds some results to be criticized. He admits that wages boards may be dominated by the employers and that competition of wages boards is about as detrimental as the competition of industries. In other words, wages boards do not assure industrial justice or industrial peace. They may solve some problems but they cause others. Read any issue of any Australian paper for proof that legislation cannot abolish strikes.

Progress must depend upon the people. It must come from within, not from without; from below, not from above. The test of the effectiveness of Australian legislation lies in whether or not it militates against individual initiative and sense of responsibility.

Mr. Albert Hinchcliffe, a member of the Australian printers' union and of the Parliament of Queensland, recently made a trip through the United States and visited the headquarters of the American Federation of Labor. In discussing this phase of Australian legislation Mr. Hinchcliffe said to us it had determined the effectiveness of labor organizations by making the workers look to outside agencies for better conditions and had thereby stunted the initiative and growth of organizations. Like Mr. Hickey, he said it had taken the heart out of the movement.

In a sympathetic magazine interview with Judge Higgins he is reported to have asked: "But why do your American trade unions prefer the bludgeon of the strike to the modern rifle of arbitration and conciliation?" If Judge Higgins had visited the headquarters of the union movement of America he would have received the answer to his question.

The fact that he has failed to get the viewpoint of the trade unionist does him no credit. Like Judge Higgins, Mr. Hugh Lusk of New Zealand came to the United States about fifteen years ago as an evangelist of compulsory arbitration. When he came again some years later he had revised his judgment. Judge Higgins may live many years longer, and if he does he will revise his modern rifle epigram.

The opinions and theories of such men as Judge Higgins are seized upon by magazines and will-o'-wisp thinkers because of their literary usefulness. They know nothing of the real lives and problems of the workers. Though they may mean well they hinder the cause of the workers.

America's workers prefer the strike, or better still the right to strike, because it stands for freedom and the right to work out their own welfare, because it is the necessary safeguard of free workers who cannot entrust to governmental agencies the right to determine when and how they shall work or consign them to prison cells. If freedom does not exist in the shops and in the mines, then the workers cannot be free. The strike is the symbol of industrial freedom; therefore America's workers refuse to exchange it for any other method of protection.

Cleveland Plain Dealer (Editorial). January 28, 1913.

Compulsion Does Not Insure Peace.

Australia and New Zealand have gone farther than any other countries inhabited by English-speaking men in testing socialistic and extremely paternal government. They have ventured upon experiments which have no parallel in the civilized world.

Among the results which these antipodean nations—for they are virtually independent in all things affecting their own affairs —claim to have achieved is the abolition of strikes. They have boasted that their compulsory arbitration laws have put an end to strikes and lockouts and insured industrial peace.

Recent facts do not sustain the claim that such gains have been made. In twelve months Australia has had eighty-eight strikes, notwithstanding the drastic state and federal compulsory arbitration laws. Australia has less than 5,000,000 inhabitants, or about 5 per cent of the population of the United States. The country is of immense extent and the natural conditions, with manufactures at a minimum and agriculture and sheep raising of outstanding importance, are such that labor troubles ought to be few and of little moment. Yet here is the equivalent, in proportion to the population, of about 1,760 strikes in the United States.

It is not strange, in the face of such facts, that the author of the federal arbitration act said, not long ago, that never had the labor troubles of the country given thoughtful citizens more concern. The commonwealth had instituted the boldest and most advanced experiments with the object of preventing strikes and lockouts but there was an unparalleled condition of turmoil and unrest. Mr. Deakin added that, "We appear to have been practically successful in preventing employers from locking out their men, but we seem to have been unsuccessful, in most instances, in dealing with strikes."

Here is a picture of the results of compulsion in labor disputes which is of a piece with the recent news from New Zealand that an officer and a citizen were killed and other persons seriously wounded, some of them mortally, in a strike riot at Waihi. Revolvers were freely used and the authorities were unable to stop the fighting between the strikers and the non-union men until much bloodshed had taken place. And all this in a country blessed with fertile soil and a beautiful climate where about 1,000,000 persons occupy for their own use and profit almost as great an area as that of Italy or two and one-half times the space Ohio fills on the map.

These conditions in countries where compulsory arbitration has been tried to the fullest extent and in the most radical form make a sorry contrast with the virtual freedom of Canada, with a much larger population than that of Australia and New Zealand combined, from serious labor troubles. In the Dominion there is no forced arbitration, but the government does compel both sides to make their position and arguments known before a strike or a lockout. Publicity is obligatory and given official weight and sanction. The rest is left to public sentiment, and the weight of the popular verdict is almost always sufficient.

The plain truth is that men do not like to be driven. They rebel at force. The most powerful labor organizations in this country have steadily opposed arbitration made compulsory by law. They demand freedom of action just as naturally as employers do. Publicity and public opinion get results impossible for the Australian method.

Saturday Evening Post (Editorial). June 6, 1912.

Compulsory Arbitration.

A few years ago opinion appeared to be setting toward compulsory arbitration as the readiest means of avoiding the tremendous loss and inconvenience arising from strikes; but of late we seem to be moving away from it rather than toward it. Chancellor Lloyd-George told the London Bankers' Association the other day that labor was strongly opposed to it, and that he had been much impressed by the "suspicious attitude" of workmen toward interference by the state.

In 1905 a resolution looking to compulsory arbitration was introduced at the annual labor congress in England and defeated by barely a hundred thousand votes out of a million and a half. In the four succeeding congresses similar resolutions were introduced and defeated by increasing majorities, until in 1909 there was an adverse majority of a million votes. At last year's congress a bill for compulsory arbitration that had been introduced in Parliament was denounced by a unanimous vote.

It is very clear, in short, that labor will not accept any sort of state intervention as a substitute for its right to strike. Perhaps some light upon labor's attitude in this respect may be derived from Great Britain's first experience under the Minimum Wage Act, which was passed to facilitate settlement of this year's great coal strike. The act provides for district arbitration boards, empowered to establish minimum wages. The Welsh board—consisting of a representative of the mine owners, a representative of the labor unions, and Lord St. Aldwyn—was first to act. By Lord St. Aldwyn's deciding vote it established a minimum wage of three shillings a day, with certain percentages that would bring the wage to about four shillings six pence—or a dollar and nine cents—a day. The miners, of course, are profoundly dissatisfied with the award.

Cleveland Leader (Editorial). November 20, 1913.

One Strike Cure Fails.

For many years New Zealand has been pointed out with pride and confidence, by extreme radicals, as a shining example

of the possibility of preventing industrial troubles by means of advanced legislation. It has been spoken of as the most progressive country in the world, the one nearest the complete abolition of poverty and excessive toil. A widely known book was published, years ago, on New Zealand's industrial and governmental conditions and experiments, under the title, "A Country Without Strikes."

Now cable dispatches from New Zealand tell of far-reaching and disastrous labor troubles. The strikes are extensive, bitterly fought and persistent. The public authorities have used force freely, even ruthlessly, to put down disorder. Great numbers of constables, most of them specially appointed and heavily armed, are on duty. There are about 1,000 in Wellington alone, a city smaller than Akron. Numerous strike leaders have been arrested and charged with sedition. Martial law is considered likely to be the final recourse of the government, throughout the country.

At Auckland, the largest city in New Zealand, the hotels have been obliged to close. Commerce with foreign countries is paralyzed. And as one of the latest cable dispatches tersely says, "Poor families are begging for bread."

New Zealand has been so greatly favored by nature and has possessed so much vacant land that it ought to have been able to escape all of the more serious trials and crises of modern industry and trade. About 1,000,000 persons occupy 104,000 square miles of country blessed with one of the mildest and most salubrious climates in the world and rich in fertile soil, good timber, coal and other minerals, plenty of natural harbors and a great variety of products. There is two and one-half times as much room as there is in Ohio, but the population is only one-fifth as large.

Is it not plain that the system of government compulsion and official bossing and regulation of all classes and interests has borne its natural fruit in fierce resentment and clashes of the most serious nature between the public authorities and the wage-earners? The result has been exactly what the heads of the foremost labor organizations in the United States have always

feared while they have been fighting against all plans for the compulsory arbitration of differences between employers and employees. They have foreseen that in the end the effect of such forcible settlements of disputes between the workers of the country and their employers would be dangerous governmental interference with the natural liberties of individuals and would jeopardize the very existence of labor organizations.

In seeking the welfare of the masses it is always dangerous to entrench too much upon individual liberty. When any government becomes tyrannical its burdens are quite certain to fall upon all classes except, possibly, the politicians in power.